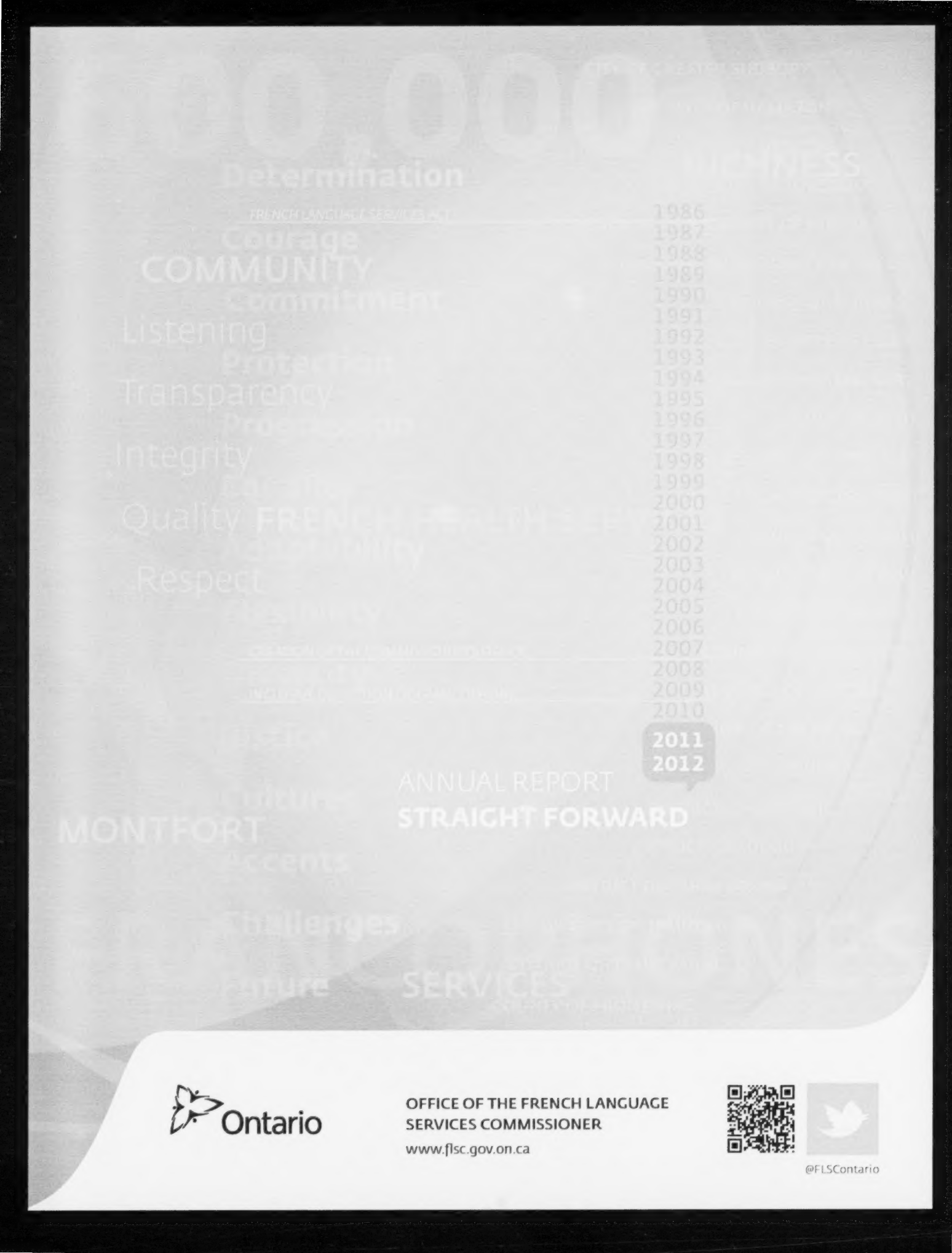

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OFFICE OF THE FRENCH LANGUAGE SERVICES COMMISSIONER

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Letter to the Minister

June 6, 2012

The Honourable Madeleine Meilleur
Minister of Community Safety and Correctional Services
Minister Responsible for Francophone Affairs

George Drew Building
18th Floor
25 Grosvenor Street
Toronto, Ontario M7A 1Y6

Dear Minister:

Pursuant to section 12.5 (1) of the *French Language Services Act*, I hereby submit to you the fifth annual report of the French Language Services Commissioner of Ontario.

This report covers the period from April 1, 2011 to March 31, 2012.

Please table this report in the Legislative Assembly, as set out in subsection 12.5 (3) of the *Act*.

Respectfully,

François Boileau
French Language Services Commissioner

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Summary and recommendations

THIS REPORT COVERS THE ACTIVITIES of the Office of the French Language Services Commissioner from April 1, 2011 to March 31, 2012. It is the fifth annual report by Commissioner François Boileau, whose second term ends in September 2012. It contains six recommendations for the Ontario government.

The Commissioner's first recommendation appears in Chapter 1. It directly addresses the question of the Commissioner's independence, as he is one of the few ombudsmen who report to a minister rather than to the Legislative Assembly. In the Commissioner's view, it is now time to change this state of affairs with a view to (i) safeguarding the position from possible political interference, (ii) encouraging MPPs to get involved, (iii) ensuring the Commissioner's independence in legal terms, (iv) enhancing the financial accountability and ability to act of the Commissioner's Office, and (v) ensuring the administrative independence of the Commissioner's Office.

RECOMMENDATION 1

The Commissioner recommends to the Minister Responsible for Francophone Affairs that an amendment to the *French Language Services Act* be introduced by March 31, 2013, specifying that the Commissioner will report directly to the Legislative Assembly.

Chapter 1 also offers a historical overview of the gradual gains that Franco-Ontarians have made as a result of the *French Language Services Act*, whose 25th anniversary was celebrated at a conference in November 2011.

In addition, the chapter covers the designation of agencies under the Act. After describing the advantages of designation, the impact in the field and the process leading to designation, the Commissioner points out that there are serious deficiencies that need to be addressed. In particular, the Commissioner is critical of the lack of mechanisms for accountability and independent assessment following designation.

RECOMMENDATION 2

The Commissioner recommends to the Minister Responsible for Francophone Affairs that a mandatory directive on the designation process for agencies be established in compliance with the *French Language Services Act*, after due consultations with representatives from the community and designated agencies. This directive should be implemented by 2013-2014 and should include:

a. **Consistent designation criteria that, in particular, provide for a minimum representation of Francophones on their boards of directors and executives;**

b. **Accountability mechanisms that are transparent and accessible to the public;**

c. **A mechanism for resolving disputes that is made available to the users of services;**

d. **A mandatory and independent assessment, every three years, based on all of the designation criteria, including criteria dealing with governance; this assessment should also include corrective measures, when necessary.**

Chapter 1 concludes with a critical look at the structures and processes introduced to support the implementation of the Act, including the role of the French language services coordinators within the ministries and the mandate of the Office of Francophone Affairs. In the Commissioner's opinion, this organizational framework, which was evaluated about 10 years ago, should be reassessed, as the government is leaning more and more toward bringing in the private sector to deliver selected services.

RECOMMENDATION 3

The Commissioner recommends that the Minister Responsible for Francophone Affairs:

a. Conduct an independent and interministerial assessment, by the end of the 2013-2014 fiscal year, of the government structures and processes designed to support the implementation of French language services within the government.

b. Ensure that this assessment focuses notably on the roles, responsibilities and hierarchical relationships of the Office of Francophone Affairs and the French language services coordinators.

c. Include the Office of the French Language Services Commissioner in this assessment.

RECOMMENDATION 4

The Commissioner recommends that the Minister of Citizenship and Immigration:

a. Set up an advisory committee by the end of the 2012-2013 year, that will be responsible for guiding ministry efforts related to the Francophone immigration file in Ontario.

b. Use a consultative and interministerial approach to develop a strategy, by the end of the 2013-2014 year, to welcome Francophone newcomers, to provide them with language training and to integrate them into the labour market.

Chapter 2 presents a portrait of the new face of Ontario's Francophonie, which now contains a high proportion of recent immigrants. The chapter touches on a number of topics, including identity-building for newcomers, the increase in exogamous couples (couples composed of a Francophone parent and one who is not), the role of bilingualism and Francophiles' contribution to the development of Ontario's Francophonie. It also discusses the Inclusive Definition of Francophone (IDF) adopted by the province two years ago, which has probably contributed to the sense of belonging felt by some newcomers. On the other hand, the government itself admits that there are inconsistencies between ministries in the use of the IDF.

Chapter 2 concludes with an examination of the programs and services available to Francophone immigrants and the way in which Francophone newcomers are welcomed when they arrive in Ontario. In view of the new immigration strategy announced by the province, the Commissioner is calling for interministerial cooperation in welcoming, training and integrating Francophone newcomers. To that end, the Commissioner's fourth recommendation is intended for the **Ministry of Citizenship and Immigration**.

Chapter 3 presents a sample of the complaints processed by the Commissioner's Office in 2011-2012, a year marked by such events as the publication of a study on French-language community radio stations in Ontario, the release of an investigation report on the distribution of a unilingual-English flyer during the Influenza A (H1N1) pandemic, and a formal investigation of the lack of French-language schools in the Greater Toronto Area. In all three cases, the government acted on the Commissioner's recommendations.

The chapter also contains an update on French-language health services since the publication of the *Special Report on French Language Health Services Planning in Ontario, 2009*. It provides a description of major changes made by the government in this area, including the appointment of a French language services coordinator in each Local Health Integration Network (LHIN) and the designation of six French Language Health Planning Entities.

Chapter 4 provides a statistical profile of complaints. It shows that the Commissioner's Office received 371 complaints in 2011-2012, down slightly (-2.6%) from the previous year. However, it also documents the fact that the Commissioner's Office handled more individual complaints on a wider variety of subjects, whereas in 2010-2011, the lack of French-language schools in the Greater Toronto Area by itself generated more than 70 complaints. The reader will also learn that the number of complaints in the "other" category more than doubled and that there was a 35% increase in admissible complaints resolved compared with the previous year.

Chapter 5 takes a close look at the government's stated plans to balance the budget, in particular the use of public-private partnerships to deliver selected services, an idea first raised last year when the government announced the formation of the Drummond Commission, and confirmed last April in Ontario's 2012 budget. We learn in this chapter that the Commissioner predicted this situation in his 2010-2011

annual report and saw it as an opportunity for the Francophone community to offer French language services on the government's behalf. While the Commissioner still considers it an opportunity, the chapter repeats the warning he gave the government after the budget was tabled. Essentially, the Commissioner reiterates his intention to oppose any program privatization, abolition or merger plans that do not offer guarantees in advance concerning the maintenance or improvement of French language services.

The chapter also examines the adoption last June of *Regulation 284/11*, which compels third parties that provide services on the government's behalf to do so in French as well as English. The Commissioner is delighted with the adoption of the new regulation, which he has been demanding for years, and he congratulates the government. However, he believes that *Regulation 284/11* cannot cover the full range of forms that new partnerships could take. The Commissioner's fifth recommendation is intended to correct this situation.

RECOMMENDATION 5

The Commissioner recommends that the Minister Responsible for Francophone Affairs ensures that all proposed legislation or any other measure leading to the creation of a public-private partnership that includes a component to deliver public services incorporates provisions which would make any entity associated with these partnerships subject to the *French Language Services Act*.

The Commissioner concludes Chapter 5 by suggesting that delegated administrative authorities — self-funded non-profit corporations that the government has tasked with certain responsibilities — should be subject to the *French Language Services Act*, and he makes the following recommendation to the Minister of Consumer Services.

RECOMMENDATION 6

The Commissioner recommends that the Minister of Consumer Services take all the necessary measures to ensure that all newly-created delegated administrative authorities, or other similar entities, are fully subject to the provisions of the *French Language Services Act*.

The final chapter in the annual report, Chapter 6, presents exemplary practices and innovations by government ministries and agencies in the delivery of French language services. For 2011-2012, the Commissioner selected 13 exemplary practices and nine honourable mentions from a total of 100 suggestions sent to him.

Foreword

THE YEAR 2012 IS THE BICENTENARY of the first great battle in which our ancestors fought together for the first time. First Nations people, British soldiers and Canadian militiamen, both Anglophones and Francophones, joined forces to repel the American invasion aimed at annexing Canada to the United States of America. Although I am not a historian, I believe that I am correct in saying that one of the aims of that war, for the Canadian militia and perhaps the First Nations, was to avoid assimilation by our southern neighbours.

With 200 years of hindsight, it is certainly easy to see how our two great democracies are quite similar, yet also different with respect to a number of values. In Canada, we enjoy a truly Canadian identity. Indeed, we share common values such as universal health care, multiculturalism, individual rights and freedoms, and respect for minorities. Canadians care about their dinstinct identity, and they are proud of it!

Canada's Francophones are also Canadians, and they too have no desire to be assimilated and lose their identity, history and heritage. Canada's Francophones, like its Anglophones, are proud of their roots as well, whether their families have been living in Ontario for centuries or they are newcomers from Morocco, Belgium, Mali, Haiti, Vietnam, Romania or Quebec.

We fought together in 1812 and in every great war since then. Yet Francophones sometimes have to fight, still, not only against assimilation but also against the francophobia of a small minority of our compatriots. Happily, the widely reported episode of the people who objected to the implementation of the *French Language Services Act* at the Cornwall Community Hospital showed us that (i) the institution managed to stand its ground on full compliance with the *Act*, and (ii) such attempts to generate language crises simply do not work in 2012. The vast majority of Ontarians have moved on. They prefer to look *straight forward* and stop reliving such futile, destructive language tensions.

Francophones simply want to receive quality services in their own language, as if it were *normal* — because that's how it should be!

There is a fundamental difference between being able to use one's second language in everyday activities and being comfortable doing so when interacting with someone in authority — a public servant, a police officer or a judge — or when feeling vulnerable, for example, when seeking health care.

Over the past year, the media have had a field day with certain studies indicating that maintaining French-language services in Canada costs millions of dollars. Those types of studies are easy to explain from an ideological standpoint, since they always have the same premise, that a person who is bilingual in English and French does not *really* need service in French. They usually do not attempt to analyze the costs of poor service in French, particularly in health care, such as misunderstanding a prescription or misinterpreting a patient's symptoms. Yet there are countless examples of situations where citizens have to visit their physician or another health professional a second time, which doubles the cost to taxpayers. Of course, the studies focus only on the costs associated with institutional bilingualism, disregarding all the benefits on the pretext that it is too complicated to quantify them.

More fundamentally, such studies imply that institutional bilingualism is something optional, something we could do without. Majority rules. But that is not what a democracy is. A true, healthy democracy takes care of its minorities. And democratic societies will always be judged by they way they treat their minorities.

Indeed, it was 25 years ago that our elected representatives at Queen's Park unanimously passed the *French Language Services Act*, the first of its kind in Canada.[1] No one forced them to do so.

And if it had to be done over again today, I am absolutely certain that the vote would be the same. Because responsible people understand how important our history is, how our values bring us together rather than divide us, and how much of an advantage Ontario has with its dynamic, friendly, vibrant, constantly rejuvenated Franco-Ontarian community. In this ever-shrinking world, it is a good thing to remember this undeniable advantage that we have here in Ontario.

[1] Since then, Prince Edward Island and Nova Scotia have passed similar legislation. The debate in under way in Manitoba, and that province may eventually have a French-language services law.

Newcomers believe in this advantage. All those people who come here from other parts of the world understand that this country already has a wonderful history, and that this history rests on solid foundations. Among those foundations are, of course, the First Nations, the Francophones and Anglophones. English and French are not simply languages used in everyday life; they are the constituents of our country's bilingualism and a universally recognized symbol of Canada's status as a welcoming land.

Many newcomers send their children to French-language or French immersion schools. Proportionally, they are the biggest contributors to the edification of Canadian society as our political leaders imagined it at the beginning of the 20th century, and as others continue to imagine it today. When I visit a French-language school, especially in the Centre-South or the National Capital Region, and I see so many students who are most certainly trilingual — and some even speak four languages! — I cannot help but be optimistic about our society's future.

Last December, inspired by our future as a society, the staff of the Commissioner's Office crafted a new vision that captures how proudly we carry out our mission:

> *The Office of the French Language Services Commissioner works to ensure active, integrated delivery of French-language services in support of the development of the Francophone community and Ontarian society.*

In other words, the enrichment of the Francophone community directly benefits Ontarian society as a whole. And conversely, its impoverishment has the opposite effect.

This new vision will help us stay focused as we go about our work of conducting investigations, preparing reports, formulating recommendations, making public appearances and so on. First and foremost, however, it helps us understand the added value of our mission.

We do more than check the quality of French-language services. We do more than receive complaints about those services. We proclaim long and loud that deficiencies in those services have an impact on the citizen's sense of belonging and identity and consequently on the community's development.

The Francophone citizen is multifaceted, complex and as diverse as the rest of the population. Surviving as a Francophone in a minority situation is almost an act of faith, in a way. You have to believe in it and not simply request service in French because you have the right to do so.

And whenever a Francophone citizen does not have access to quality French-language services, he or she stops believing. And it's when a Francophone stops believing that assimilation pursues its destructive course, and society as a whole also loses out in the process.

In this annual report, the emphasis is more on deficiencies in French-language services and their impact on citizens. With this fifth annual report, I can honestly say that the commitment to providing quality French-language services, at the Ontario government's highest levels, is real. But the true test is in the field.

It is also in the field that we find the citizens who are most in need of reassurance that their language is still an important language, a relevant language that is worth preserving, a language that welcomes every newcomer to Ontario. And it is in the field that the government has the opportunity to reach those people, in their daily lives, at home and at service outlets, whether they are operated by public servants directly or by the private sector.

Since January, the Commissioner's Office has also been trying to reach people through social media, especially using Twitter, in addition to the regular blog that I have been writing for the past two years, with two or three postings a week. In using these media, our hope remains the same: to reach more people, to be able to interact quickly with citizens, and to add our voice to the public debate.

And finally, when I reflect on what I am the most proud of in my five years as Commissioner, my spontaneous answer is the entire staff of the Commissioner's Office — permanent employees, interns and students alike. While the public service is often perceived as impersonal and distant, I can assure you that the opposite is true, especially when it comes to the staff members of the Commissioner's Office. In the public service — including at the Commissioner's Office — employees are always being asked to do more with less. But I can tell you that it is rare to find public servants who do not care about serving the public. For this, I wish to express to them my sincere gratitude.

I would also like to thank the government for the confidence it has shown in me over the past five years. It has truly been a privilege for me to provide advice to the government, particularly the Minister Responsible for Francophone Affairs, the Honourable Madeleine Meilleur and her team.

"And whenever a Francophone citizen does not have access to quality French-language services, he or she stops believing. And it's when a Francophone stops believing that assimilation pursues its destructive course and society as a whole also loses out in the process."

The *Act* and its Regulations

1.1 HISTORICAL OVERVIEW

The concept of democracy does not merely mean 'majority rule,' it means majority rule with appropriate respect for the rights of minorities.

Clement Richard ATTLEE

THE HISTORY OF LANGUAGE RIGHTS in Ontario is directly and inextricably linked to the history of our country. Ever since Confederation — indeed, prior to 1867 and as far back as the Quebec Act of 1774 — our parliamentary democracy and our survival as a nation have depended upon the way in which we have treated our linguistic minorities. In Reference re Secession of Quebec, the Supreme Court of Canada expressed it thusly, "Although Canada's record of upholding the rights of minorities is not a spotless one, that goal is one towards which Canadians have been striving since Confederation, and the process has not been without successes."[1]

Since its unanimous adoption in 1986, much has been written about the origin, scope, and goal of the *French Language Services Act* in both history books and legal texts. The Commissioner addressed this historical issue in his first Annual Report in 2007-2008, entitled Paving the Way. It is not possible, in a few short paragraphs, to list all of the milestones in the recent history of French Ontario. However, as historians Michel Bock and Gaétan Gervais have written, the adoption of the *Act* is, unquestionably, a pivotal moment in the history of the Franco-Ontarian community.[2]

The adoption of this legislation did not happen overnight. In Ontario, people often referred to the advancement of the French fact as a "baby steps" process. In its conclusion, the Royal Commission on Bilingualism and Biculturalism, (the Laurendeau-Dunton Commission) called for the creation of bilingual districts in precisely defined areas so that citizens could receive services in one of the official languages from the federal government as well as from the provincial and municipal governments concerned.[3] It will be recalled that in the constitutional agreement that failed to be adopted in 1971, known as the *Victoria Charter*, Ontario was prepared to recognize the right of any individual to request services in French when dealing with a head or central office of a government ministry or agency.[4]

In 1977, the *Association canadienne-française de l'Ontario*, ACFO — which has since become the *Assemblée de la francophonie de l'Ontario*, the AFO — called for a law that would guarantee the right to French-language schools (prior to the enactment of the *Charter* in 1982). ACFO also called for framework legislation guaranteeing services in French.[5] According to Bock and Gervais, this was a major turning point because ACFO was not calling for official bilingualism; it was only calling for services in French.[6]

Credit for the unanimous adoption of Bill 8, which became the *French Language Services Act*, goes to the Honourable Bernard Grandmaître, who was then the Minister Responsible for Francophone Affairs. However, unanimity often comes with concessions, such as failure to secure an ombudsman or exemptions for municipalities and universities.

The Montfort Hospital case repositioned the *French Language Services Act* as a quasi-constitutional statute above every other statute in the province. It will be recalled that, by means of a health services restructuring commission, the government attempted first to close this French-language hospital in the Ottawa region, then to drastically reduce the services it offered. The outcry from the province's Francophone community, indeed from the Francophone community across Canada, was unprecedented. As had been true so many times in the past, the community had to resort to the courts in order to prevent another injustice from being

[1] *Reference re Secession of Quebec*, [1998] 2 SCR 217, paragraph 81.

[2] Bock and Gervais write that the *Official Languages Act* of Canada and the *Canadian Charter of Rights and Freedoms* have also had a pivotal impact on the history of the Franco-Ontarian community. Cf. Michel Bock and Gaétan Gervais, *L'Ontario français : Des Pays-d'en-Haut à nos jours*, Centre franco-ontarien de ressources pédagogiques, 2004, p. 217. We could also add to this list of legal texts the *Courts of Justice Act*, 1984, which establishes that English and French have equal status as official languages in Ontario's courts of justice.

[3] François Boileau, « Les héritiers de la *Loi sur les langues officielles* ». In: Jack Jedwab and Rodrigue Landry, Eds. Life after Forty. *Après quarante ans. Official Languages Policy in Canada. Les politiques de langue officielle au Canada*. Kingston: McGill-Queen's University Press, 2011, p. 122.

[4] According to s. 15 of the *Victoria Charter*, "An individual has the right to the use of the official language of his choice in communications between him and the head or central office of every department and agency of the Government of Canada and of the Governments of the Provinces of Ontario, Quebec, New Brunswick, Prince Edward Island and Newfoundland."

[5] Bock and Gervais, *op. cit.*, p. 193.

[6] *Ibid.*

committed. The Ontario Court of Appeal* upheld the trial judge's decision in favour of the Francophone community, stating that the *French Language Services Act* had a twofold objective: the protection of Ontario's Francophone minority and the advancement of French by means of promoting its equality to English.

That the French language has advanced in Ontario is evident in a number of ways. In the field of education, 12 school boards and several postsecondary institutions of learning now serve the Francophone community. In the field of health, progress has taken the form of French-language community health centres and hospitals, institutions capable of delivering health care in French, and the new French Language Health Planning Entities, which give Francophones a say in the planning of French-language health care. Francophones are justifiably proud of another pillar of the community: the now autonomous Groupe Média TFO. And of course, it will also be recalled that in 2007, the *French Language Services Act* was amended to create the position of French Language Services Commissioner.

1.1.1 Conference on 25 years of the French Language Services Act

On November 17-18, 2011, 25 years to the day after the enactment of the *French Language Services Act*, a conference marking the anniversary was held in the Desmarais Building at the University of Ottawa. With the theme "Our Rights, Our Actions, Our Future", the conference was the result of collaboration amongst the University of Ottawa's Faculty of Law, the Office of the French Language Services Commissioner, the *Association des juristes d'expression française de l'Ontario (AJEFO)*, and *Groupe Média TFO*, with support from the Office of Francophone Affairs.

Organised around five panels, the conference sparked lively debate and, at times, heated yet consistently constructive exchanges. Designed for the general public as well as for researchers and legal experts, the conference was highly successful. Close to 200 representatives from various walks of life and fields of endeavour in the Francophone community came together to discuss language rights. Summaries of the panel discussions are posted on the Commissioner Office's website.

One of the highlights of the conference came when the original debate as recorded in *Hansard*, was read aloud by its authors, the Honourable Bernard Grandmaître, LL.D., the Honourable Bob Rae, and the Honourable Gilles Morin. It was a word-for-word re-enactment of the debate that was held in the Legislative Assembly in 1986 — exactly 25 years to the day — that led to the unanimous adoption of the *Act*.

What was striking about the reading, quite apart from the emotion that it evoked, was that for the participants at the time, the *Act* was an initial step toward the promotion and protection of French-language services, not an end in itself. This is no doubt why the Honourable Bernard Grandmaître invited conference participants to consider reviewing the Act on a regular basis, to ensure that it continues to meet the needs and address the concerns of the Francophone community and Ontarians in general. The objective is to ensure that this statute, which is of such great importance to the development of Ontario's Francophone community, continues to evolve.

1.1.2 Reasons for adopting a language law

A statute on French-language services not only signals respect for our collective history; it is also a solemn affirmation of a vision for the future. In 2015, Ontario will celebrate 400 years of Francophone presence in the province. This Francophone heritage is part of our past, as is the case for First Nations, the Inuit and the Métis, who are descendants of the first exogamous unions in Canada between the coureurs de bois and Aboriginal women. Canada was founded on respect for this rich history and on a promise that this country would welcome people from around the world and invite them to live here among two great host societies in which two great international languages, French and English, are spoken.

For it needs to be said that French remains an important language that is spoken by over 220 million people worldwide. It is spoken in the 75 states and governments that are members of the International Organisation of La Francophonie. French is also a language that is expanding, particularly in Africa.

Here, in North America, where the most widely used languages are English and Spanish, French is spoken by some eight million individuals, including slightly less than one million in Canada outside of the province of Quebec. Francophones have lived in every Canadian province and territory for generations. Canada also welcomes French-speaking newcomers from every corner of the globe.

It is a well-known fact that formal, public recognition of a language is a key factor in the fight against assimilation. With the *French Language Services Act*, French has become a public language, and not only a language that is spoken in private, as the federal Commissioner of Official Languages,

* *Lalonde v. Ontario* (Commission de restructuration des services de santé), 2001 56 O.R. (3d) 577.

Graham Fraser, has pointed out.[9] This does not mean that French had been in hiding, it means simply that after decades of hard-fought battles for a school here and as a result of a legal action there, the province's language laws now provide public recognition that not only is it normal to speak French and to live in French in Ontario, but that the use of French is desirable and enriching for Ontario as a whole.

And it is also a matter of equality, in the true sense of this term, as defined by the Supreme Court of Canada. It is a matter of substantive equality, as opposed to formal equality.

Under the principle of formal equality, everyone is treated in an identical manner. Unfortunately, the result of this type of approach is that some groups — often in a minority situation — do not have the same opportunities to enjoy certain things that are easily accessible to other groups, which are often part of a majority. For example, based on the tenets of applying formal equality, all citizens have equal access to trains. However, if there are no access ramps at platforms for individuals with reduced mobility, these individuals clearly do not have real equal opportunities to travel by train.

Hence the importance of the concept of substantive equality, which recognizes that additional measures may sometimes be necessary to ensure actual equality of opportunities. This is the case for Francophones in Ontario who, due to their minority situation, are vulnerable to assimilation, socio-economic decline, the erosion of their heritage and numerous other threats, unless specific positive measures are taken to assure them of real equal opportunities to preserve their language, their culture and their identity, in short, their integrity.

The rights granted by the Act are not negotiable. They are not bargaining chips. First and foremost, the Act constitutes legislative and political recognition of the rich heritage of the Franco-Ontarian community and its active participation in the prosperity of the province. It recognizes builders and farmers in Eastern Ontario, workers in Southern Ontario, and labourers, miners, and settlers who cleared fields and built roads in Northern Ontario. The *French Language Services Act* does not merely look back on this rich past; it also speaks to the future potential of this community that will always have a lot to contribute.

[9] Opening Remarks at the *Conference on 15 Years of the French Language Services Act* held at the University of Ottawa on November 18-19, 2011.

1.2 INDEPENDENCE OF THE COMMISSIONER

Let us re-examine this significant change in 2007, when the Legislative Assembly amended the *French Language Services Act* to create the position of Commissioner, and in turn the Office of the French Language Services Commissioner. That was five years ago, at a time when the province's legislators wanted to breathe new life into the Act in order to ensure that it would be fully complied with, and in particular to realize its two-fold objective of protecting Ontario's Francophone minority and the advancement of French by means of promoting its equality to English, as described previously. The creation of this position was therefore largely perceived by the Franco-Ontarian community to be a necessary step in the right direction.

However, there was also some criticism in 2007, including by the official Opposition which, while happy about the appointment of the current Commissioner to that position, complained about the fact that he would report directly to the Minister Responsible for Francophone Affairs and not to the Legislative Assembly, like other officers of Parliament. According to that criticism, this situation meant a lack of transparency, since the investigator was asked to report directly to the institution that could be the subject of his or her investigation.[10]

The New Democratic Party subsequently made it a key issue and introduced Bill 193 in May 2011 and then Bill 49 in March 2012, to have the Commissioner report directly to the Legislative Assembly.[11] This question was also raised during the campaign leading up to the election held in October 2011, and at that time the government did not shut the door on the possibility of granting the Commissioner real independence.

The Commissioner has often been asked to address this issue, but until now he did not wish to share his opinion, mainly in order to avoid becoming involved in an electoral issue. However, since that vote is now in the past, and after having spoken directly with representatives of the three parties in the Legislative Assembly, the Commissioner considers that it is his duty to provide the government with his opinion, as required by the *Act*.

The person who currently holds this office therefore firmly believes that **the position of French Language Services Commissioner should report directly to the Legislative Assembly**.

[10] Philippe Orfali, "François Boileau défendra les francophones de l'Ontario," *Le Droit*, August 2, 2007.

[11] Bill 49, *French Language Services Amendment Act*, 2012. For more information: http://www.ontla.on.ca/web/bills/bills_detail.do?locale=en&Intranet=&BillID=2594 (page consulted in April 2012).

Here are the reasons why.

1) Political non-interference

Things should be made quite clear. From the beginning of his mandate, the Commissioner has had a level of independence that honours the current Minister Responsible for Francophone Affairs. In fact, the Commissioner has been granted the independence that he needs to set up his office, to establish the limits of his mandate and for all other activities of his office.

However, all this could change dramatically at any moment if even a single person were to be replaced at the political or administrative level, for instance either the Minister Responsible for Francophone Affairs or the current Commissioner. This is because the position of Commissioner requires that this person have the ability, desire and necessary resolve to stay the course on the effective implementation of the *French Language Services Act*. And it is important, if not essential, for this person to be given the elbow room required to carry out his or her mandate. This means allowing the Commissioner to act on the basis of acquired knowledge, observations and independent thinking. The fact that one's position relies upon the political ups and downs of the day does not provide the necessary independence to fully carry out one's mandate.

To appreciate the fragile nature of a position that reports to a minister instead of a Parliament or the legislature there is no need to look very far. One should remember the episode at Statistics Canada last year, when the minister responsible for that federal agency quickly reminded everyone, including, and in particular, senior officials at that organization, that they reported to a minister and were not, in fact, independent, contrary to what many may have believed over several decades. The Chief Statistician at the time, it should be remembered, had to resign.

2) Involvement of Members of Parliament

The *French Language Services Act* is a quasi-constitutional statute. This means that this statute takes precedence over all other legislation passed by the Legislative Assembly, apart from other quasi-constitutional statutes such as the *Freedom of Information and Protection of Privacy Act* and the *Human Rights Code*. Would it not, therefore, be natural for members of the Legislative Assembly to be asked to actively participate in the implementation of the *French Language Services Act*, a statute that is so important for Ontario?

Indeed, if the Commissioner were to report directly to the Legislative Assembly, it would mean that he would be directly responsible to the members of the Legislature who had chosen him in the first place. MPPs would thus be in a position to ask the Commissioner — and other key players, such as the Minister Responsible for Francophone Affairs and any other interested parties —, to provide them with explanations. It has already been 25 years since the members of the Legislative Assembly unanimously voted to adopt the *French Language Services Act*. Would it not therefore be natural for MPPs to be able to obtain updates on the implementation of this statute directly from the Commissioner?

In addition, having an independent Commissioner who reports directly to members of the Legislature would go a long way to maintaining the interest of public servants and senior officials in complying with the *Act*. The reason for this is simple: the Commissioner would no longer be "serving" the government but would be serving all members of the Legislative Assembly, and therefore the population of Ontario. The Commissioner's messages would continue to be heard, not only by the government but also by members of the public service who are responsible for implementing the *Act* on a daily basis.

3) Independence in legal terms

As a government agency, and because it is not independent, the Commissioner's Office cannot, in theory, seek independent external legal advice other than from the Attorney General of Ontario because it is not independent.

The Attorney General's lawyers are trained to provide solid and objective legal advice and to respect the rule of law. Indeed, the Commissioner has received such advice that has turned out to be quite useful.

That being so, however, to dispel any possible perception of a lack of independence from government — including on legal matters — the Commissioner arrived at a Memorandum of Understanding with the Office of the Attorney General that allows him to seek external legal advice on matters concerning the interpretation of the *French Language Services Act*.

This agreement, however, is not foolproof. In fact, it can be cancelled at any time by one of the parties, in which case the Commissioner would no longer be able to seek external legal advice and would therefore lose the appearance of acting independently from the government. If the Commissioner were to report directly to the Legislative Assembly, the situation would be quite different because the Commissioner would then possess the full manoeuvring room required to request external and independent legal advice.

4) Financial accountability and ability to act

Whenever public administration is subjected to across-the-board cuts, the budget of the Office of the French Language Services Commissioner is not spared: the Commissioner's Office is treated like any other provincial agency without any regard for the unique nature of its mandate or the

modest size of its team (six individuals, including the Commissioner).

Moreover, the Commissioner's Office is financially dependent on the **Office of Francophone Affairs**. It may perhaps be a well-kept secret, but basically, the funds allocated to the Office of the French Language Services Commissioner constitute no more than a line item in the budget of the Office of Francophone Affairs.

In addition, the funding provided to the Commissioner's Office is far from extravagant at slightly less than $900,000 annually. In concrete terms, this means that any reduction in expenses — no matter how small — has a very real impact. This may mean cancelling one or more investigative reports or eliminating a special investigation which the Commissioner's Office would no longer have the means to undertake.

However, even more worrisome is the fact that the Commissioner's Office is not protected from the will of a government which, for example, may want to cut off its financial lifeline and undermine its ability to carry out its mandate.

If the Commissioner's Office were to report to the Legislative Assembly, it could plead its own case during periods of austerity measures and its funding would be protected from ill-timed and partisan decisions. Moreover, the Office would not have to obtain funding through another government agency, which could only facilitate its ability to act and to be accountable for management of public funds.

5) Administrative independence

Lastly, on an administrative level, the Office and its Commissioner, like the Office of Francophone Affairs, are required to change ministry, based on the other responsibilities of the Minister Responsible for Francophone Affairs. As a result, when the Minister Responsible for Francophone Affairs was also serving as Minister of Community and Social Services, the Office and the Commissioner were administratively linked to this ministry for matters related to human resources, IT services, support for the *Freedom of Information and Protection of Privacy Act*, and numerous other requirements related to the daily operations of an office. Over the years, it has therefore developed connections, contacts and operating methods which facilitate the management of day-to-day activities, especially for an office as small as the Office of the French Language Services Commissioner, which is often somewhat forgotten within the large ministries.

In December 2011, when the new cabinet was sworn in after the election, the Minister Responsible for Francophone Affairs remained the same but also became the Minister of Community Safety and Correctional Services, dropping her responsibilities as the Minister of Community and Social Services. Consequently, with just one move, both the Office of Francophone Affairs and the Office of the French Language Services Commissioner were required to change their line Ministry... and once again start everything from zero. This was simply a repetition of a previous situation when the minister responsible was also serving as the Minister of Culture.

For all of these reasons, the Commissioner believes that an amendment to the *French Language Services Act* is necessary.

RECOMMENDATION 1

The Commissioner recommends to the Minister Responsible for Francophone Affairs that an amendment to the *French Language Services Act* be introduced by March 31, 2013, specifying that the Commissioner will report directly to the Legislative Assembly.

1.3 DESIGNATION OF GOVERNMENT AGENCIES

1.3.1 Advantages, process and follow-up

a. Advantages of designation

The designation of an agency means a commitment and formal recognition of its ability to provide French language services. It is not a goal in and of itself, but rather a means of guaranteeing the active and ongoing provision of French language services in the field, in order to meet the specific needs of the population being served.

Indeed, designation allows agencies to benefit from legal and political protection under the *French Language Services Act*. A designated agency or program provides its supplier with legal immunity that protects it from changes in the economic and political climate. Montfort Hospital is the most eloquent example of this advantage: it was able to avoid being shut down and broken up precisely because of its designated status.

> "A request for designation, which is the result of a courageous decision by the Board of Directors, is, above all, a highly significant political gesture. Status as a designated institution confers recognition on two levels, namely in the socio-political and political spheres, while providing a certain notoriety. Naturally, designation acts as a political and legal shield by providing quasi-constitutional protection against the potential reduction or discontinuation of programs and services. Finally, designation has the advantage of promoting budgetary stability. This is an undeniable fact."[12]
>
> Denis Hubert-Dutrisac, Sudbury

b. Requirements and impact in the field

In 2011, six agencies, funded by the **Ministry of Health and Long-Term Care** and the **Ministry of Community and Social Services**, and the **Ministry of Children and Youth Services**, were newly designated under the *French Language Services Act*, thereby bringing the total number of designated agencies up to 222. In that year, the existing designations of five designated agencies were expanded to include services provided on behalf of the previously-mentioned ministries, as well as on behalf of the **Ministry of Training, Colleges and Universities**.

Designated agencies provide a wide range of services in French, such as services to support children and youth, services to help women victims of violence and, of course, medical care. It is also important to remember that designation, which is intended to protect French language services within an establishment, is totally voluntary on the part of the agency, even though there is nothing in the Act that stipulates this principle.

To become partially or totally designated as provided under the *Act*,[13] an agency must meet the following four conditions:[14]

- Offer quality services in French on a permanent basis;
- Guarantee access to services in French;
- Have some representation of Francophones on its board of directors and executive; and
- Have developed a written policy for services in French that has been adopted by its board of directors and that sets out the future responsibilities of the agency.

These criteria may appear to be technical and abstract. However, complying with them and implementing them have a direct and concrete impact on the daily life of French-speaking citizens. For example, when a designated agency adopts a written policy concerning the active provision of French language services, communications intended for the public must be made available in both languages simultaneously. The same is true in terms of signage and the information intended for the general public or for the agency's clients. French-speaking citizens are therefore provided with access to high-quality French-language services at all times, offered by the agency's professionals. In addition, the designated agency will plan and manage human resources to facilitate the recruitment and retention of bilingual staff, thereby ensuring that French language services are provided at all times during the agency's business hours.

The criterion of representation of Francophones on the agency's board of directors and executive is just as important. Members of the board of directors, who are often volunteers, come from the public or private sectors, or from labour organizations. They represent the community and speak on its behalf. Important decisions involving the agency are often made by that board. In fact, the board is responsible for the running of its agency and will set the priorities that must be respected in order to meet the needs of its clients. Adequate representation of Francophones is therefore not only necessary, it is essential for ensuring that the specific needs of the agency's clientele are taken into account.

In addition, the participation of Francophones on the board of directors and the executive facilitates dialogue, which can now be held directly with members of the community without the need for an intermediary, to discuss their priorities in relation to those of the agency.

Finally, it is important to mention that it is the executive that submits recommendations on behalf of the agency to its board of directors. Having Francophones on the executive most certainly makes it possible to measure the impact on the community and to ensure that its needs are taken into account when developing new programs and services.

[12] Presentation by Denis Hubert-Dutrisac, President of Collège Boréal, during the *Conference on 25 Years of the French Language Services Act* held on November 18 and 19, 2011 at the University of Ottawa.
[13] *French Language Services Act*, R.S.O. 1990, c. F.32, par. 9(1).
[14] Available online: http://www.ofa.gov.on.ca/en/flsa-agencies.html (page consulted in April 2012).

c. Process

Once these conditions are in place, the agency that is a candidate for designated status begins the steps for submitting its application. There are a number of stages to be followed in this process. First of all, the agency's board of directors must adopt a resolution expressing its desire to submit an application for designation to become a provider of French-language services. Next, the institution must submit its request to the funding ministry's Coordinator of French Language Services. That coordinator, or his or her delegate, will work with the candidate agency to prepare the documents to be included in the application for designation on the basis of evaluation request forms that vary from one ministry to the next. After review and approval by the Deputy Minister, the designation request is sent to the Office of Francophone Affairs, which will analyse the request and ensure that it meets the Office's designation criteria.

A new stage begins once the Office recommends designation to the Minister Responsible for Francophone Affairs. After that recommendation, the Legislation and Regulations Committee and Cabinet must give their approval to have this request confirmed by means of a regulation.

Once this process has been completed, the Lieutenant Governor in Council has the authority to designate the agency as a "public service [agency] for the purpose of the definition of 'government agency'".[15] Thus, while the application for designated status is voluntary, **once designation has been granted it is the government that sends the message, by means of a regulation, that the French-language services the agency already provides are important, necessary and permanent**.

This process, which can take over a year, ends with the issuing of a certificate attesting to the agency's designated status under the *French Language Services Act*. This waiting time, which some consider to be too long, can partly be explained by the fact that the application for designation must go through various hands and stages before it is completed. However, this delay is not the only deficiency that should be corrected.

d. Deficiencies to be addressed

Designated agencies are required to provide high-quality French-language services just like ministries and government agencies, and they are required to have policies and procedures to address complaints about the delivery of these services.

For example, designated agencies in the health sector are, under the terms of their Service Accountability Agreements with the Local Health Integration Networks (LHINs), required to submit a French language services report to the LHINs, in order to assess the progress being made in the implementation of French-language services and to identify any possible gaps.[16] However, this report should should also ideally be shared with the new **French language health planning entities** and made available to the public (see inset).

FRENCH LANGUAGE HEALTH PLANNING ENTITIES

The French language health planning entities were created by the Ontario Government by means of a regulation made under s. 16 of the *Local Health System Integration Act, 2006*. The regulation went into effect on January 1, 2010, and enabled the government to appoint six entities throughout the province. The creation of these entities was one of the recommendations that the Commissioner made in his *Special Report on French Language Health Services Planning in Ontario*, released in May 2009.

The role of the entities is to advise the LHINs on methods of engaging the Francophone community in the area; the health needs and priorities of the Francophone community in the area; the health services available to the Francophone community in the area; the identification and designation of health service providers for the provision of French language health services in the area; strategies to improve access to, accessibility of and integration of French language health services in the local health system; and the planning for, and integration of, health services in the area.

Under the *Local Health System Integration Act, 2006*, the LHINs are required to take the entities' recommendations into account.

[15] *French Language Services Act*, *op. cit.*, al. 8 (a).

[16] Office of the French Language Services Commissioner, *Special Report on French Language Health Services Planning*, Toronto, 2009. Available online: http://www.csf.gouv.on.ca/files/Rapport.pdf (page consulted in April 2012).

The Commissioner supports this approach that holds designated agencies acountable, and recommends that citizens make their complaints directly to those agencies. However, complaints can also be presented to the Commissioner's Office, which may require the institution named in the complaint to answer questions of a more systemic nature.

In fact, once it has been designated, the agency falls under the authority of the Commissioner, who may conduct an investigation in the event of a failure to comply with the requirements of the *Act* regarding the availability and accessibility of French-language services. But with the current process, these new service providers are not subject to any monitoring or ongoing government assessment.

Therefore, although certain agencies were designated many years ago, since the creation of the LHINs, these agencies have not been subject to any post-designation assessment to ensure their compliance with the conditions arising from their status as providers of French-language services.

It is certainly true that the government encourages designated agencies to submit tri-annual self-evaluation reports to the Office of Francophone Affairs, in order to ensure that they are still meeting their designation criteria and integrating French-language services in the development of their programs and services. However, very few agencies actually submit these reports on their own initiative and such reports are seldom requested by ministries.

In addition, it is essential to point out that this task may be difficult, given the fact that the ministries do not always use the same evaluation chart or criteria for designation, as has been mentioned previously. This lack of a shared interpretation should also be addressed.

The criteria for the representation of Francophones on the board of directors and executive committees of designated agencies is a perfect illustration of this situation.

According to the Office of Francophone Affairs, the criteria for designation of agencies do not include a requirement with respect to appointing a set number of Francophones to their boards of directors. The practice of ministries, when analyzing applications for designation, is to ensure adequate representation. But who is deemed to be Francophone for a designated agency? How many Francophones are required to be members of those boards and according to what ratio? And finally, does representation vary in relation to the demographic weight, the type of services provided or the scope of a designation? There is no consensus regarding the answers to these questions, and this lack of consensus adds to the confusion.

The issue of determining who is a Francophone for the purposes of representation is currently a matter of debate.

In the Commissioner's opinion, it is important that an individual be considered from a human stand point rather than a statistical one. If a person who wants to become a member of a board of directors considers him or herself to be Francophone, it is ultimately a personal choice. However, any appointment to serve on a board of directors must be first investigated by a subcommittee of the board, namely a nominations committee. And it will be up to the members of that subcommittee to asking the candidate questions or base itself on its own research (as is often the case in practice) on a whole range of questions and subjects, including language ability and community membership. Questions similar to those asked in the census conducted by Statistics Canada should be avoided as such questions would be of little use. That data is strictly used for statistical purposes, and its analysis is rather complex. Therfore, it cannot be applied to specific individuals.

The **Ministry of Health and Long-Term Care** has adopted a pragmatic formula to allow it to ensure Francophone representation. According to that formula, at least one Francophone member must serve on boards of directors with fewer than 10 members, and on boards where there are more than 10 members, a minimum of two Francophones are required. This formula also provides that in a region where there is a high concentration of Francophones, Francophone representation should be at least proportional to their demographic weight in that region.

The Commissioner considers that a designated agency must have minimal representation of Francophones on its board of directors and its executive. The formula that has been developed and applied in the health sector has the advantage of having being tested in the field for close to two decades. It is therefore an exemplary practice that should be imitated by other sectors.

Beyond the percentage of Francophones that should be a part of each executive or board of directors, the Commissioner considers that Francophone representation should first and foremost be based upon one's identification to his or her region as well as one's level of sensitivity and familiarity with the challenges and specific needs of the French-speaking community whose interests are to be defended.

However, once they have their designation certificate, agencies will sometimes use the excuse of flexibility in order to avoid their obligation to provide Francophone representation. Unfortunately, this can result in an underrepresentation of Francophones on the boards of directors of agencies that are located in regions with a high concentration of Francophones.

Such a situation was in fact brought to the attention of the Commissioner's Office in the case of a designated hospital

located in the Eastern region, following a significant change in the administrative bylaws governing its board of directors. The hospital in question was not complying with the Ministry of Health and Long-Term Care's criteria for Francophone representation that specified that the number of Francophones on its board of directors should be proportional to their demographic weight in that region.

Yet, the ministry had informed the Commissioner's Office that the hospital had been assessed in 2005, and that, at the time, the Ministry was satisfied that it met the criteria for Francophone representation on its board of directors. This particular case is more than a simple anecdote. In fact, it highlights the lack of an ongoing and mandatory process for assessing designated agencies.

In addition, the Ministry stated that it had the intention of aligning its criteria with the criteria used by the Office of Francophone Affairs. If that were to happen, the result would be a lowering of standards across the board!

Furthermore, it should be pointed out that while these criteria are required by the Office of Francophone Affairs and are complied with by candidate agencies, they are not set out anywhere in the Act or in the related regulations, or even in any government directive or policy. This is why it is important to make this process and these criteria formal and consistent.

As well, when a designated agency merges with a non-designated agency, the services and programs that were the object of the designation must not undergo any change in terms of the delivery of French-language services. The supervising ministry must submit an application to amend the regulation in order to better reflect the name of the new, merged agency and to update the directory of services provided, as applicable. **Therefore, in the Commissioner's view, no merger between a designated agency and a non-designated institution should be considered if the new facility created by that merger does not maintain all of the services and programs that were originally designated.**

In the case of Cornwall Community Hospital, which was created out of the merger of two health care facilities, including Hotel Dieu Hospital, that is precisely what happened. And given the fact that Hotel Dieu Hospital was designated under the *French Language Services Act*, the new medical facility was then obliged to also apply for designation under the *Act*. Having acted any differently would have been disastrous for the Francophone community and, more importantly, illegal under the *Act* and unconstitutional according to the unwritten principles of the Canadian Constitution, as was illustrated in the Montfort court case.

Finally, although the *Act* provides for the designation of agencies, the lack of a formal and transparent process to be followed and the fact that there are no mechanisms for accountability, nor mandatory, independent post-designation assessments, renders the designation process vague and unclear for a great number of Francophone stakeholders as well as for the general public.

RECOMMENDATION 2

The Commissioner recommends to the Minister Responsible for Francophone Affairs that a mandatory directive on the designation process for agencies be established in compliance with the *French Language Services Act*, after due consultations with representatives from the community and designated agencies. This directive should be implemented by 2013-2014 and should include:

a. Consistent designation criteria that, in particular, provide for a minimum representation of Francophones on their boards of directors and executives;

b. Accountability mechanisms that are transparent and accessible to the public;

c. A mechanism for resolving disputes that is made available to the users of services;

d. A mandatory and independent assessment, every three years, based on all of the designation criteria, including criteria dealing with governance; this assessment should also include corrective measures, when necessary.

e. Differences between designated and identified agencies

The main difference between agencies that have been **designated** under the *French Language Services Act* and agencies that have been **identified** to provide French language services is that, in the case of agencies that have been fully or partially designated, that designation is not only a voluntary act by those agencies, but it also signifies their engagement within the Francophone community. It is therefore a very real commitment to maintaining high-quality French-language services, regardless of circumstance or passage of time.

The expression "identified agencies" is not in the *Act*. Rather, it refers to the process used by a ministry or government agency to identify a service provider that will be responsible for the provision of French-language services, to ensure, for

example, the availability of a continuum of health services in French.

The Commissioner nonetheless notes that there is a somewhat lax attitude when a ministry is questioned about a lack of French-language services. In fact, all too often certain ministries hide behind the non designation of service providers to exempt them from having to develop human resources policies that would enable the provision of adequate French-language services. In the Commissioner's opinion, this is unacceptable, because after all, it is the government's responsibility to ensure that French-language services are made available. And even if the government chooses to provide services through a third party, its obligations do not automatically disappear. Finally, when it is argued that those suppliers are organizations that are independent from the government and that the only thing that counts with respect to French-language services are results, the Commissioner must react. Although the Commissioner agrees with the previous statement, he also firmly believes that designated status must be promoted more actively by the Government of Ontario, ministries and other government agencies. After all, that was the clearly the intent of the *Act* when it was adopted in 1986.[17]

Thus, particularly in the health sector, the identification of agencies puts an end to the notion of voluntary participation. Indeed, identification serves as a preliminary step to designation. Otherwise, the institution serving the community on behalf of the government would only be acting on the basis of the government's new regulation concerning third parties (see section 1.5).

Now that this new regulation on third parties has been adopted, the Commissioner hopes that this lax attitude will end. In addition, since the majority of the identified agencies are found in the health sector, it is important to determine how the new French language health planning entities will carry out their assessments and provide advice to the LHINs regarding all suppliers of French-language health services, whether they are designated or identified. For this reason, over the next few years, the Commissioner will keep a watchful eye on the whole issue of the French-language services offered by identified agencies; mainly because moving towards a designated status under the *Act* is inevitable.

[17] In a document entitled *"Loi de 1986 sur les services en français, Notes explicatives de l'honorable Gilles Pouliot, ministre délégué aux Affaires francophones"* [The *French Language Services Act*, 1986, Explanatory Notes by the Honourable Gilles Pouliot, Minister Responsible for Francophone Affairs], the explanation of paragraph 8(1)a) clearly states: *"The government will use its power to designate agencies in a responsible manner in order to ensure that high-quality services are provided wherever they are necessary. It would not be useful to impose systematic designation. The government will therefore consult the Ontario French Language Services Commission (and, following its dissolution, the OFA) and the agency involved, it will explain the needs of the community and help to meet those needs, and it will ensure that a climate is created that will encourage the agency to voluntarily honour its obligations towards the Francophone community."*

1.3.2 Designation of postsecondary institutions

In May 2008, *Collège Boréal* became the first postsecondary educational institution to be designated under the *French Language Services Act*. In the chapter on exemplary practices in his 2008-2009 Annual Report, the Commissioner remarked: "In designating Collège Boréal, the Government of Ontario has legally recognized the College's efforts to provide the Francophone community with adequate service in the future."[18]

It was clear to the Commissioner, however, that the designation of Collège Boréal was merely the beginning. In March 2010, he discussed designation with the president of the University of Ottawa. Ottawa had already been contemplating designation in the wake of the efforts of the Task Force on Programs and Services in French. At the Conference on 25 years of the *French Language Services Act*, the designation of institutions such as the University of Ottawa, Laurentian University, *Université de Hearst*, and *La Cité collégiale* became a major public issue for the community — and rightly so. Indeed, the Commissioner would like to see these institutions designated, if only partially, for two reasons. Designation would provide Francophones with a guarantee of French-language services and it would ensure that Francophones are active participants in the governance of these institutions.

A number of important questions remain to be answered by these institutions and, in an attempt to find answers, the Commissioner has entered into discussions with each institution.

One series of questions concerns the impact of designation on program and course offerings. For example, a university usually creates programs in response to new needs; similarly, it discontinues programs that no longer attract students or that are no longer relevant. Another series of questions concerns the impact of the *Act* on a fundamental characteristic of universities: academic freedom and independence.

These discussions must now be continued with the Government of Ontario mainly because, at the end of the day, it is the government that grants designation under the Act. In the meantime, the Commissioner is committed to pursuing this dialogue with the universities. He has also proposed that — as applications for designation are submitted to the government — a memorandum of agreement between the Commissioner's Office and each of these institutions be developed in order to set out the parameters for action by the Commissioner in the event of a complaint.

[18] Office of the French Language Services Commissioner, *One Voice, Many Changes*, 2008-2009 Annual Report, Toronto, 2009, p. 50.

in full compliance with the letter and the spirit of the Act. So far, up until March 31, 2012, the *Université de Hearst* has been the only postsecondary institution to publicly state its intention to submit an application for designation.

1.4 DESIGNATED AREAS

As mentioned at the beginning of this chapter, it was the Royal Commission on Bilingualism and Biculturalism, also known as the Laurendeau-Dunton Commission, which, in the late sixties, launched a discussion about the creation of "bilingual districts." It wanted federal, provincial, and municipal services to be offered in both official languages in certain regions of the country.[19] For a variety of political and constitutional reasons, this concept was not immediately pursued.

However, the first designated areas were created in Ontario in 1972, when the province adopted a policy on the delivery of French-language services that required all communication with the public — written and oral — to be conducted in both official languages.

It was not until November 1986, however, that the Legislative Assembly of Ontario enacted the *French Language Services Act*. The *Act* created 22 officially designated bilingual areas. It gave the Ontario Public Service a period of three years in which to prepare to offer French-language services in these clearly-delineated areas.

Today, close to 85% of the province's Francophones live in one of the provinces designated areas, which are now 25 in number.[20] But it is important to note that not all government offices and agencies located within these areas are required to offer services in both official languages. It is up to the government to designate one or more offices where French-language services will be offered. According to the *Act*, the test is reasonable access to services in French for members of the public.

[19] David Bourgeois, *Canadian Bilingual Districts: From Cornerstone to Tombstone*. Montreal and Kingston, McGill-Queen's University Press, 2006.
[20] Available online: http://www.ofa.gov.on.ca/en/flsa.html (page consulted in April 2012).

THE BENEFITS OF DESIGNATION

"The primary reason to apply for designation is to break the isolation. For the Francophone community, it's also a matter of equity.

Designation offers access to French-language services on a permanent basis, not on a random basis. It makes it possible to use the bilingual skills of employees. It is a form of individual and collective recognition.

And with designation, the residents of a region who had stopped believing in a Francophone community now feel a call to stand up, be counted, and live their daily lives in French."

Jeannine Proulx, former Executive Director of ACFO Mille-Îles, who played a key role in Kingston's designation.

a. Requirements and process

Although the Act does not define the criteria for their designation, it does allow for the creation of new designated areas. Up until the 25th area was designated, the government had always used a statistical criterion to determine whether an area would be designated. According to this criterion, either the urban centre in the area applying for designation had to be home to 5,000 Francophones or 10% of the total population of the area had to be Francophone.

The **Office of Francophone Affairs** uses the population census that Statistics Canada conducts every five years to determine whether new areas meet the criterion for designation. However, almost all of the areas were designated when the Act was passed in 1986 and only three areas have been added since, while three others — Waterloo, Niagara, and Durham — have applied for designation.

The process of designation begins with the submission of an application for designation to the Office of Francophone Affairs. The Office conducts a series of analyses,[21] the first of which, naturally, is a statistical analysis, followed by an examination of the potential operational and financial impact of designation on the resources of the concerned ministries in the area. The Office then makes a recommenda-

[21] Available online: http://documentationcapitale.ca/index.cfm?Repertoire_No=-751102913&voir=centre_detail&id=4742 (page consulted in April 2012).

tion to the Minister Responsible for Francophone Affairs, who in turn submits the application to Cabinet. When Cabinet has approved the application, a regulation is published in The Ontario Gazette, after being signed by the lieutenant-governor.

b. Evolving criteria

The City of Kingston, the most recently designated bilingual area, has set a precedent regarding the designation process. Although it did not meet the demographic criteria according to the Statistics Canada 2001 Census, the community's willingness, commitment, and dynamism played a determining role in the government's decision to grant designation. Henceforth, the criterion of "community support" finds its place alongside the usual statistical criterion and is now taken into consideration for new applications for designation. Thus, a new frame of reference has been proposed by the Office of Francophone Affairs to define this new approach.

Basically, in order to convince the government that they are relevant and viable, new applications must demonstrate that the community as a whole rallies around the proposal for designation.

Although this criterion has not been officially adopted, the proponents of designation must obtain a letter of support from Members of Provincial Parliament in the proposed designated area. Ideally, applications will also include letters of support from leaders in the Francophone community, French-language organizations in the region, the private sector, and school boards.

In tandem with this new effort that is being asked of the community, the Office of Francophone Affairs will develop a public relations campaign at the local level, with information sessions for the region's Members of Provincial Parliament.

And finaly, the public will have a maximum of 60 days in which to provide its comments and feedback, after approval of the application by the Minister.

The Commissioner believes that the addition of these new criteria for evaluating applications for designation is a positive step. He believes that recognizing community support as a determining factor in designation will help communities to organize themselves and rally around a common goal.

The act of designating an area is not purely political, legal or administrative. For Francophones, designation breathes new life into communities. It contributes to the prosperity and development of their communities and represents a public recognition of the value and importance of their language.

Designation adds a measure of permanence to the delivery of French-language services, which are no longer offered at the whim of the person sitting behind the counter. Instead, this permanent offer of French-language services offer forces providers to improve the quality of their services. It is also a powerful way to counter assimilation and to build strong and vibrant communities that can now count on receiving the same level of access to government services as the members of the majority.

1.5 THIRD PARTY SERVICE PROVIDERS

Since the tabling of his first annual report in May 2008, the French Language Services Commissioner wasted no time in recommending to the provincial government that it make a regulation confirming what the *French Language Services Act* already makes provision for, namely, that a government ministry or agency that offers services to the public through a third party must still honour its obligation under the Act to provide French-language services.

Last year, the government finally took action, and in June 2011, it announced the adoption of a new regulation concerning the services delivered by third parties on behalf of government ministries and agencies. By way of a news release,[11] the French Language Services Commissioner expressed his great satisfaction regarding this outcome. Indeed, this regulation, which had twice been recommended by the Commissioner, aims to protect the delivery of services in French and represents a call to order for government as a whole.

The new Ontario *Regulation 284/11 Provision of French Language Services on behalf of Government Agencies* also includes measures that make the active offer of French-language services a fundamental principle that must be respected, from now on, by third parties who provide services on behalf of government agencies.

Following the government's announcement on June 24, 2011, the Commissioner stated: "With this important gesture, the government has laid another building block in the edifice of linguistic rights for Francophones in Ontario. Furthermore, with this regulatory framework, the government is providing a concrete endorsement of the concept of the active offer of French-language services."

The next day, French-language newspaper *Le Droit* characterized the government's decision as "courageous":

[11] Available online: http://www.flsc.gov.on.ca/files/files/FLSC-third-party-services-in-French.pdf (page consulted in April 2012).

> "No more loopholes. No more excuses. From now on, any agency that offers services on behalf of the Government of Ontario is subject to the same language requirements as the government itself. The fact that a provincial service has been entrusted to an agency in the broader public sector, a municipality or a private corporation does not mean that the legal requirement to provide service in French disappears. From now on, the obligation to provide service in French is automatically there."[11] [TRANSLATION]
>
> Pierre Jury, Editorial writer, *Le Droit*

Thus, the government finally has a new regulation that came into force on July 1, 2011, and applies to all new contracts with third-party service providers. The Commissioner was delighted by this action and also appreciated the dedication with which the government — in particular the Office of Francophone Affairs —helped government agencies to more fully understand the provisions of the regulation. Indeed, the Office organized an information session that was attended by over 100 individuals.

The regulation provides a three-year grace period (till July 1, 2014) by which existing contracts must comply. Once again, the Office took the lead; in August 2011, it struck a steering committee of chief administrative officers and an interministerial working group to review all existing agreements with third-party suppliers. According to the Office, this governance model will ensure that a coordinated approach is developed and put in place, at the ministry level, to ensure that the regulation is implemented and to ensure that applicable pre-existing French service resources, processes, and practices are strategically deployed.

The Commissioner applauds these initiatives that will no doubt make it possible to address some of the challenges of implementing this regulation. For example, it will be important to ensure that all government ministries and agencies clearly understand the modern legal interpretation of the regulation — one that is based on the intent of the *Act* — in order to prevent the emergence of new loopholes. Undoubtedly, in the years to come, the objectives being pursued will be discussed further but, for now, there is cause for celebration. The regulation is all the more relevant and reassuring, given the impact of the Drummond Report and the tabling of the 2012 Ontario Budget.

1.6 STRUCTURES AND PROCESSES TO SUPPORT THE ACT

During his first five years in Office, the Commissioner did not hesitate to cast a critical eye on the structures and processes created by the *French Language Services Act* to support the implementation of French-language services within the Ontario Government. Naturally, the main focus here is on the **Office of Francophone Affairs** and French-language services coordinators. And the Commissioner has made several recommendations to improve the fluidity and efficiency of decision-making over the delivery of these services. Many of these have been implemented; others have not.

In spite of this, the Commissioner has not given up and remains firm in his convictions on two important matters.

First, the Commissioner believes that the French-language service coordinators - and the cluster's managers - play a key role within the government and that this role should be reviewed and augmented.

Second, the Commissioner firmly believes that the Office of Francophone Affairs must be enabled to fully accomplish the mandate conferred upon it by the *French Language Services Act*.

In October 2004, the government received a final report from an independent consulting firm that had been hired to evaluate the structures and processes relating to the government's French-language services. This very thorough report identified a number of major problems around compliance with the *Act*, in terms of implementation structures and processes. The report presented some 15 recommendations, many of which were taken up while others were not. They dealt with the status, roles, and responsibilities of the French-language service coordinators within each government ministry, with the way in which French-language services are designed and delivered to the public, and with other, equally relevant aspects of implementation of the *Act*.

Sometimes, it is appropriate and useful to hire an external, independent research firm to ensure that legislative objectives are being met and that the intentions of our legislators are being respected. At the time, the Office of Francophone Affairs felt that it was appropriate to undertake such an evaluation — and rightly so. Now, almost 10 years later, the Commissioner believes that a new evaluation would be appropriate and useful.

[11] Pierre Jury, "Un règlement courageux", *Le Droit*, June 28, 2011.

The interministerial evaluation conducted in 2004 looked at not only the Office of Francophone Affairs, but also the internal management of briefs to Cabinet, the roles and responsibilities of each ministry's French-language service coordinator, and the organizational links between the development of French-language services and their delivery.

A new evaluation is all the more relevant because the government is preparing major changes in the way it delivers services to the public, with increased reliance on the private sector. Given the new regulation on third parties, which confirms that all government ministries and agencies are legally required to maintain the quality of French-language services, there could not be a better time for ensuring that there is an organizational structure in place for the delivery of French-language services based on tangible, measurable results — a conclusion that was reached in the evaluation conducted in 2004.

Furthermore, the Commissioner is of the opinion that his Office should be included in this evaluation to ensure that, after close to five years of operation, it is on the right track and can continue to look ahead in the right direction. It would be illogical and incompatible with the sound management of public funds to exclude the Commissioner's Office from such an evaluation, whether or not it operates at arm's length from the government.

"The Francophone citizen is multi-faceted, complex and as diverse as the rest of the population. Surviving as a Francophone in a minority situation is almost an act of faith, in a way.

RECOMMENDATION 3

The Commissioner recommends that the Minister Responsible for Francophone Affairs:

a. **Conduct an independent and interministerial assessment, by the end of the 2013-2014 fiscal year, of the government structures and processes designed to support the implementation of French language services within the government;**

b. **Ensure that this assessment focuses notably on the roles, responsibilities and hierarchical relationships of the Office of Francophone Affairs and the French language services coordinators;**

c. **Include the Office of the French Language Services Commissioner in this assessment.**

The new face of Ontario's Francophonie

UNLIKE THE *FRENCH LANGUAGE SERVICES ACT*, which has not changed much in a quarter century, the face of Ontarian society is continually being transformed by successive waves of immigration. In 2006, Ontario was home to more than half of Canada's visible minority population.[24] The Franco-Ontarian community is no different. It has a high proportion of recent immigrants. In fact, more than one out of five Francophone immigrants arrived in Ontario between 2001 and 2006. Many of those recent immigrants settled in Eastern and Central Ontario.[25]

In this demographic mosaic, there is no shortage of labels to help each person self-identify according to their own chosen cultural and linguistic characterics. French-Canadian, Franco-Ontarian, Francophone from Ontario or Francophone Canadian. In addition, there is the growing proportion of exogamous couples — i.e. those composed of one Anglophone parent and one Francophone parent — and young people who increasingly identify and describe themselves as bilingual.

2.1 A POPULATION IN FLUX

The 1960s saw the disappearance of the term "French-Canadian" as we knew it, and the emergence of Franco-Manitobans, Franco-Albertans and Franco-Ontarians, to name just a few.[26] This period coincided with the establishment of the Royal Commission on Bilingualism and Biculturalism, which recommended the enactment of an official languages law at the federal level.

In 1969, the *Association canadienne-française de l'Ontario (ACFO)* boycotted the Estates General of French Canada, marking the end of solidarity in the French-Canadian family.[27] The introduction of the Franco-Ontarian flag in 1975 strengthened the community's appropriation of its cultural and linguistic identity in the province. It was the start of a nascent pluralistic society's construction of a French-speaking community in Ontario. And in 2009, the Ontario government's adoption of the Inclusive Definition of Francophone (IDF) added a stone to that pluralistic edifice which characterizes the contemporary Franco-Ontarian population.

According to Census data from Statistics Canada, there were 582,690 Francophones in Ontario in 2006, 4,545 more than in 2001.[28] Like Ontario's population, the Francophone population is becoming more ethnically diverse and more dependent on immigration. Visible minorities make up 10% of the Franco-Ontarian population. In addition, the Francophone community has a large proportion of recent immigrants with 22% of them arriving in Ontario between 2001 and 2006.

The most recent statistics show that three out of five Francophones were born in Ontario, one out of five in Quebec, more than 13% outside Canada and 5% in other provinces. Of course, those figures differ from region to region.[29] For example, nearly a third of Francophones in Central Ontario were born outside of Canada, compared with nearly 50% in Toronto.

And finally, over a third of Ontario's Francophone immigrants were born in Europe. It is important to note, however, that more than three out of five Francophone immigrants emigrated from developing countries, including 26% from African countries,[30] followed by 12% from Asian countries.

[24] Tina Chui, Kelly Tran and Hélène Maheux, *Canada's Ethnocultural Mosaic, 2006 Census*, Ottawa, Statistics Canada, 2008.
[25] Available online: http://www.ontario.ca/en/communities/francophones/profile/ONT05_024278.html (consulted in April 2012).
[26] Bock and Gervais, *supra* note 2, p. 183.
[27] Gervais, Gaétan. "L'histoire de l'Ontario français (1610-1997)", in Joseph Yvon Thériault, dir., *Francophonies minoritaires au Canada — L'état des lieux*. Moncton, Éditions d'Acadie, 1999, p. 157.
[28] Available online: http://www.ontario.ca/en/communities/francophones/profile/ONT05_024276.html (page consulted in April 2012).
[29] Available online: http://www.ontario.ca/en/communities/francophones/profile/ONT05_024278.html (page consulted in April 2012).
[30] According to a report entitled *La Langue française dans le monde 2010*, published by the International Organisation of La Francophonie in 2011, the number of French speakers is growing steadily, especially in Sub-Saharan Africa. The report predicts that by 2050, less than 40 years from now, nearly nine out of ten Francophones will be living in Africa.

2.2 A PLURALISTIC FRANCOPHONIE: EXOGAMY, BILINGUALISM AND FRANCOPHILIA

The IDF also applies to exogamous families, in which one parent is Francophone and the other is not. The percentage of exogamous couples continues to grow in Ontario; today, two thirds of Francophone households are exogamous. There are some regional differences, however. For example, there are more exogamous couples in Southwestern Ontario (86%) than in Central Ontario (83%), while the percentage is much lower in the north-eastern part of the province (54%).

The Ontario Government's new inclusive calculation method treats as Francophone all families that speak French at home, not just those who use French most often at home. Many children from exogamous families attend French-language school. Therefore, it was important for such situations to be taken into account and for those families to be recognized as Francophone.

It is also important to note that the transmission of French to the children of exogamous French/English couples increased from 11% in 1971 to 23% in 2006. In the case of French/third language couples, the transmission rate rose from 17% in 1971 to 25% in 2006. In other words, the transmission of French to the children of exogamous couples more than doubled in 35 years, while the exogamy rate increased steadily.[11]

The children of such couples mostly consider themselves to be "bilingual".[12] Some researchers characterize the identity of young Franco-Ontarians as a new status or as being dual or even hybrid, which has certain advantages.[13] However, aside from the qualifier used to describe membership in one language group or another, young Franco-Ontarians identify more readily with two or even three communities. At the Conference on 25 Years of the *French Language Services Act* held at the University of Ottawa in November 2011, Professor Diane Gérin-Lajoie pointed out that the bilingual identity is not defined solely by the ability to speak both French and English but rather by the meeting of two cultures that can sometimes clash. It is a new identity status.

Alongside the Francophone immigrants and the bilingual children of exogamous couples, there is another population group that is often ignored or underestimated, even though it is a natural ally that should be relied on for support: Francophiles. Indeed, Francophiles appreciate linguistic duality and see it as an asset for their children and Ontarian society in general. And because they believe in it, they try to take part in the activities of the Franco-Ontarian community, which is not always easy.

The IDF

The Inclusive Definition of Francophone (IDF) changes the criteria used in counting Ontario's Francophone population. It is based on three variables: mother tongue(s), knowledge of official languages, and language(s) spoken at home. Consequently, the IDF includes not only people whose mother tongue is French but also individuals whose mother tongue is neither English nor French (allophones) but who have a particular knowledge of French as an official language and use it at home. Under the IDF, a Lebanese or Moroccan family that speaks Arabic and French at home is considered Francophone. According to this new definition developed by the **Office of Francophone Affairs**, the Francophone population is of 582,690 people, or 4.8% of Ontario's population.

> "Personally, it was thanks to the core French program at my English school that I was able to learn, appreciate and love French, which offers innumerable advantages. French is special within the Francophile community, because it is a second language which is not limited to any particular ethnicity. In fact, it unites us all as Canadians, because regardless of our origins, we can learn it and use it every day in our bilingual communities. Finally, when I do not have an opportunity to speak with Francophones, I try to think in French and to translate information I hear by watching French television programs or films, for example, in order to maintain the level of my language proficiency."
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> Daniel Hu
> Ambassador, French for the Future
> Toronto

[11] Jean-Pierre Corbeil and Sylvie Lafrenière, *Portrait of Official-Language Minorities in Canada: Francophones in Ontario*, Ottawa, Statistics Canada, 2010.
[12] Dallaire, Christine, "'I am English too': Francophone Youth Hybridities in Canada." In Nilan, P. and Feixa, C. *Global Youth? Hybrid Identities, Plural Worlds*, (pp. 32-52). London and New York: Routledge, 2006.
[13] According to a recent study by York University, bilingualism may delay the onset of Alzheimer's disease by a few years. For more information: http://www.cbc.ca/news/health/story/2012/03/29/dementia-bilingual-study.html (page consulted in May 2012).

The Francophone community must continue to recognize Francophiles' contribution to and cooperation in its development. In fact, every two years, the government presents the Ontario Francophonie Awards to Francophones and Francophiles who have actively participated in the political, social, and economic prosperity and vitality of the province's Francophone community.

2.3 THE IDF, TWO YEARS LATER

There is no question that aside from the symbolism and the adjustment of population figures to include some 50,000 immigrants who are now considered to be Francophones, the adoption of the IDF has generated and even strengthened a sense of belonging to the Franco-Ontarian community.

> "Franco-Ontarian? I don't know. Francophone? Absolutely. Personally, I had always, rightly or wrongly, associated being Franco-Ontarian with having a Francophone ancestry. But thanks to the new definition, I have the impression, for the first time, that I am a full-fledged member of the Francophone community. Of course, I don't have the same connection with the French language as those who have fought to preserve it, but our common denominator is that we live in French every day and we have a desire to transmit the language to our children." [TRANSLATION]
>
> Ayan Aden, Coordinator
> ACFO, London-Sarnia

Indeed, French Ontario is building on the Franco-Ontarian community's heritage and history and is enriched by diversity. And this diversity is an essential contribution that had to be taken into account. Nevertheless, more than two years later, it is time to ask ourselves whether the new Inclusive Definition of Francophone has been understood and applied by all ministries and governmental organizations.

In his previous annual report, the Commissioner indicated that he would gather information in the following year to ensure that the IDF's calculation method was being correctly applied by the Ontario Government and its service providers. This analysis assessed the definition's impact on government programs and services. Thus, a number of questions have been submitted to the government regarding this matter.

The government has admitted that there is some inconsistency in the use of the new criteria to count the number of Francophones in the province, despite the adoption of the IDF. Certain ministries and their service providers do not appear to be making current and systematic use of the new criteria.

A case in point is the **Ministry of Children and Youth Services**. In 2010, the Commissioner's Office received a complaint on the issue of financial support for some Ontario EarlyYears Centres whose grants from the Ministry are based on the proportion of Francophone children served. The results of the investigation showed that the Ministry was using the old, non-inclusive definition to calculate grants, which was penalizing EarlyYears Centres that had seen an increase in Francophone newcomers, especially in areas that attract many immigrants, such as Toronto.

However, the government has informed the Commissioner's Office that a number of ministries are using the IDF to collect data and to monitor the level and quality of French-language services provided directly by them or via third parties. In addition, the Office of Francophone Affairs has pledged to develop a communications plan to increase awareness in the ministries regarding the use of the new definition as a common calculation method. The government has also stated its intention to convey this same message to designated agencies. But given that the action plan and timetable for implementing this initiative have yet to be determined, the Commissioner intends to keep a close eye on the situation.

2.4 PROGRESS AND SERVICES FOR FRANCOPHONE IMMIGRANTS

If French Ontario is growing in absolute terms,[14] it is largely because of the influx of Francophone immigrants from around the world. While there is still a great deal of Francophone immigration from Quebec, the fact remains that the needs of Ontario's Francophone newcomers from abroad are immense and growing.

There are already many assistance programs for new immigrants: settlement programs, housing assistance, employment services, language training and citizenship

[14] According to the latest data from the 2006 Census, Ontario is the province that receives the largest number of international immigrants. In 2006, for example, 55% of immigrants to Canada were living in Ontario. The same is true for Francophone immigrants outside Quebec. Nearly 70% of all French-speaking immigrants who settled outside Quebec were living in Ontario, many of them in the Ottawa and Toronto metropolitan areas. For more information: http://www.statcan.gc.ca/pub/89-642-x/89-642-x2010001-eng.pdf (page consulted in April 2012).

preparation classes. The **Ministry of Citizenship and Immigration** seems to be fairly active in assisting and supporting organizations working with Francophone newcomers.

The Ministry of Citizenship and Immigration and Citizenship and Immigration Canada each deliver their own immigrant integration programs in the areas of settlement, language training and labour market immigration. These programs sometimes overlap given that they have similar goals. Citizenship and Immigration Canada's programs focus on language training and settlement, with limited support for labour market integration. For example, the Language Instruction for Newcomers to Canada (LINC) program provides adult immigrants with basic training in one of Canada's official languages to facilitate their social, cultural and economic integration. The program is offered, for example, at *Collège Boréal* in Hamilton and at *La Cité collégiale* in Ottawa.

At the provincial level, the school boards provide immigrants with classes in French or English as a second language that are funded by the Ministry of Citizenship and Immigration. There is certainly some overlap between programs, but it is important to bear in mind that the Ontario Government has broader eligibility requirements than its federal counterpart. Indeed, all immigrants whose mother tongue is neither English nor French, including Canadian citizens, permanent residents, Convention refugees or refugee claimants, can take advantage of the province's programs and services.

The first Canada-Ontario Immigration Agreement, signed in 2005, led to the development, a year later, of a strategic plan for settlement services and language training. The three key needs identified were (i) job search assistance, (ii) language training, and (iii) information and counselling.[35] However, Francophone stakeholders also identified special needs regarding French-language settlement services and the establishment of support networks for Francophone immigrants. Six years later, only three agencies — in Toronto, Ottawa and Hamilton — are receiving funding from the Ontario government to provide settlement services in French. Moreover, it is important to note that no new five-year agreement has been signed since the expiry of the 2005 Canada-Ontario Immigration Agreement, which was extended last year.

At the provincial level, the question that must be asked is whether the current settlement programs and existing training programs, such as second-language classes and bridge training programs, are part of a strategy based on a common and concerted vision for the integration of Francophone immigrants. In other words, are they initiatives based on a specific plan or initiatives by disparate groups? Can we expect greater interministerial collaboration in orientation, training and integration for Francophone immigrants, whether they are from other Canadian provinces or other countries?

For example, when a Francophone newcomer attempts to obtain a first health card or a first driver's licence, will this person have received an information package or brochure explaining the various options available to newcomers and their family? We are talking about essential information, such as access to French-language schools and French-language and bilingual postsecondary institutions and other government and community services. Such information packages already exist, but they are not provided systematically to newcomers from Quebec, from Acadia, from French-speaking countries, or from countries that are members of the Francophonie.

In March 2012, the Ontario government announced that it was planning to develop a new immigration strategy, with the help of a roundtable of experts. To the Commissioner's delight, one of those experts is a woman from the Francophone ethnocultural communities.

Moreover, as part of the Ontario immigration strategy development process, the Minister's parliamentary assistant will be holding a specific, targeted consultation with Francophone community leaders to ensure that Franco-Ontarian immigration concerns are heard, understood, and fully considered by the expert roundtable. Taken together, the expert roundtable membership and targeted consultation described above will ensure that input from the Francophone community informs Ontario's immigration strategy.

The roundtable is expected to submit its recommendations to the government this summer. Those recommendations will shape the new provincial immigration strategy to better support Ontario's economic development while helping new Ontarians find skilled employment. This approach is supported by the February 2012 report of the Commission on the Reform of Ontario's Public Services (Drummond Report).

[35] For more information: http://www.cic.gc.ca/english/resources/publications/settlement/coia-plan.asp (page consulted in April 2012).

> "On the other hand, if immigrants are unable to use their skills and education, their contributions to the Ontario economy cannot be fully realized. [...] In short, future trends in immigration and the degree to which Ontario can successfully integrate new arrivals into the province's labour market and social fabric will have a significant effect on Ontario's fiscal fortunes."[56]

Nevertheless, it is important that as soon as they arrive — or better yet, before they arrive —, immigrants realize that they can not only obtain service in French from the federal and provincial governments, but also live in French, apply to have their children educated in French and obtain community assistance in French. To ensure this happens, Ontario needs an orientation and integration strategy. In developing such a strategy, the government is well-advised to continue to consult with various Francophone community leaders and groups working in that area. It would also be desirable for the Ministry of Citizenship and Immigration to consider the example of several other ministries and establish a French-language advisory committee.[57] The Commissioner recognizes that the Ministry of Citizenship and Immigration regularly participates with representatives of the Francophone community, including Francophone immigrants, at various intergovernmental and community stakeholder tables and events, ranging from membership on the *Sous-comité directeur: Immigration francophone dans les communautés francophones en situation minoritaire (Ontario)* to participation at the three regional Francophone immigration network *(Réseau de soutien à l'immigration francophone)* annual forums held in 2012.

RECOMMENDATION 4

The Commissioner recommends that the Minister of Citizenship and Immigration:

a. Set up an advisory committee by the end of the 2012-2013 year, that will be responsible for guiding ministry efforts related to the Francophone immigration file in Ontario;

b. Use a consultative and interministerial approach to develop a strategy, by the end of the 2013-2014 year, to welcome Francophone newcomers, to provide them with language training and to integrate them into the labour market.

[56] Commission on the Reform of Ontario's Public Services, *Public Services for Ontarians: A Path to Sustainability and Excellence*, Ministry of Finance of Ontario, 2012.

[57] The Minister Responsible for Francophone Affairs established the Provincial Advisory Committee on Francophone Affairs; the Minister of Health and Long-Term Care has the French Language Health Services Advisory Council; the Minister of Education has a Permanent Task Force composed of the key stakeholders in education; and the Ministry of Education adopted the *Consultation Policy on Governance of French-Language Education* in July 2011.

Francophones and their government

3.1 INTRODUCTION

PROVINCIAL ORGANIZATIONS AND THE MULTITUDE of stakeholders care about the effective delivery of French-language services. Nonetheless, the Francophone space is somewhat shrinking in Ontario. It would be simplistic to attribute this decline exclusively to inadequacies in the planning and implementation of government services, but there is no denying that some government employees at every level have a poor understanding of the Francophone minority's situation, which, in all probability, contributes to the shrinkage of the Francophone "institutional" space.

For Francophone citizens, dealing with the public or parapublic sector is often a very different experience than it is for their Anglophone neighbours: their initial contact with a public servant is seldom in their own language; if they feel up to asking for service in French, they constantly have to anticipate the possible scenarios (at best, a sympathetic response; at worst, a humiliating rejection), not to mention the repercussions for themselves and their families. They also have to be prepared for the news that the service they want is unavailable in French or that they will have to wait or go to more trouble, when they know for a fact that the same service is easily accessible to Anglophone citizens.

The failures reflected in the complaints filed with the Commissioner's Office are of two main types: "before the fact" failures, such as neglecting to consider the needs of Francophones at the program development stage or subordinating French-speaking partners to English-speaking suppliers; and "after the fact" failures, such as sending an Anglophone social worker to visit a Francophone family or having insufficient bilingual staff at a call centre.

Before-the-fact failures are often perceived as more important by the organizations concerned, after-the-fact failures being seen as mere "glitches". Such views clearly reflect the above-mentioned lack of understanding, as the combined effect of those failures is that Francophone citizens do not see themselves in their government, feel that the legitimacy of their needs is constantly being questioned, and come to distrust a public administration that is supposed to serve them. In short, it is a classic case of the whole becoming bigger than the sum of its parts.

The result is a vicious circle: gun-shy Francophone citizens are afraid to request service in French, and the organization and its employees, for whom providing service in French practically becomes an oddity, lack the means or even the will to deliver the service properly.

The government has a duty, when delivering its public services, to halt the shrinking — and the fraying — of the Francophone threads in Ontario's social fabric.

First, it must uphold, if not own, its responsibilities with respect to Ontario's French-speaking citizens, in particular by building a public service that is truly equitable toward them, which treats Francophone citizens on an equal footing with Anglophone citizens.

Second, the government must be sensitive to the complaints that it receives, either directly from the public or through intermediaries, and above all, it must resolve them not only from a client service perspective but also from the standpoint of stewardship of the Francophone institutional space in Ontario.

This section describes a few of the problems and complaints that the Office of the French Language Services Commissioner handled or received in 2011-2012.

One thing, however, must be made clear: The goal is not to deprecate the progress made over the years or to cast aspersions on anyone, but rather to paint a realistic portrait of Franco-Ontarians' vulnerability against the government's machinery, in the hope of getting the attention of those who design and deliver government programs and services.

3.2 EDUCATION, CHILDREN AND YOUTH

The future of Ontario's Francophonie is in the hands of tomorrow's adults, who are none other than today's children and teenagers. It is no surprise, then, that the Commissioner feels particularly moved when citizens report systemic or individual situations that have a direct impact on the younger generation of Francophones.

3.2.1 Postsecondary education in French in Central-Southwestern Ontario

Questions continued to arise this year about the lack of French-language postsecondary education options in the Central and Southwestern parts of the province.

The reader will remember that in last year's report, the Commissioner announced his intention to launch a formal investigation of the inadequate supply of French-language college and university programs in central and southwestern Ontario – a far-reaching problem that negatively affects enrolment in French-language secondary schools, French-language education rights, young Francophones' identity-building process and, crucially, the capacity of tomorrow's workforce to provide services in French.

The Commissioner acted on his commitment and approached the **Ministry of Training, Colleges and Universities** about developing solutions to meet the needs of an increasing Francophone population and facilitate greater access to French-language postsecondary education opportunities in the Centre and Southwest regions.

The Commissioner sincerely hopes that the Ministry has taken seriously the threat that the lack of postsecondary education options poses to the survival of Ontario's Francophone community.

3.2.2 French-language schools in the Greater Toronto Area

The Commissioner's Office conducted another important formal investigation last year, on the shortage of French-language schools in the Greater Toronto Area. One must keep in mind that Section 23 of the *Canadian Charter of Rights and Freedoms* guarantees the right to education in the minority language at the elementary and secondary levels where numbers warrant, and the province has an obligation to ensure that those rights are upheld.

With the essential support of the Ministry of Education, the Commissioner's Office was able to gain a thorough understanding of the issue, and in June 2011, it produced a detailed investigation report that concluded with three recommendations focusing on the construction of facilities, cooperation between school boards and amendment of the regulation governing the sale and purchase of school properties. That latter recommendation was, in fact, reiterated in the report of the Commission on the Reform of Ontario's Public Services chaired by economist Don Drummond.

In March 2012, the Commissioner followed up on his recommendations and expressed satisfaction with the measures taken by the Ministry of Education to solve the problem, including the funding of nine new French-language schools in the Greater Toronto Area and the Ministry's willingness to review *Regulation 444/98 Disposition of Surplus Real Property*, with a view to improving the use of school facilities funded out of the public purse. However, in the case of upcoming changes to this regulation, the Commissioner would have preferred a tighter schedule, rather than a commitment to make the usual round of consultations. Having said that, the Commissioner still finds the government's remarks in the 2012 Ontario Budget encouraging. The Budget document states that "the government will change the school board allocations to encourage school boards to consolidate underutilized school sites, resulting in annual savings of over $70 million at maturity. This will begin in the 2013-14 school year to allow boards time to work with their communities to ensure a smooth transition, taking regional circumstances into account."[38]

Given the autonomy of Ontario's school boards, the Commissioner does not have the power — or the desire — to interfere in their affairs or exert undue pressure. He feels that he has done his duty by encouraging cooperation and facilitating the exchange of school properties between boards.

The die is cast, and the Commissioner hopes that this goodwill continues to prevail on all fronts so that Francophone parents and their children will eventually see an equitable supply of French-language elementary and secondary education options in the Greater Toronto Area.

3.2.3 Children's aid societies

The lack of French-language services in Ontario's children's aid societies, organizations funded by the **Ministry of Children and Youth Services**, is a recurring issue, and the subject of a recommendation in the Commissioner's 2009-2010 annual report.

In his 2010-2011 annual report, the Commissioner revisited the recommendation and praised not only the Ministry's efforts but also the lucid statements of the Commission to Promote Sustainable Child Welfare concerning the need for province-wide consideration of the Francophone population's specific needs.

[38] The 2012 Ontario Budget is available online: http://www.fin.gov.on.ca/en/budget/ontariobudgets/2012/papers_all.pdf (page consulted in April 2012).

The work of reforming, rationalizing and integrating the child welfare system is currently proceeding apace, and French-language services appear to be in good hands thanks to the Commission's prudent guidance.

Yet, while the Commissioner supports the reform process and has full confidence in the Commission to Promote Sustainable Child Welfare, he has to confess that he is champing at the bit, since he continues to receive lacklustre reports from Francophone citizens concerning the way in which children's aid societies are handling their requests for service in French. He eagerly awaits the day when he can do something other than ask those highly vulnerable complainants to be patient.

3.2.4 Day treatment education programs

Last year, the Commissioner lamented the fact that Francophone students in Toronto whose specific educational needs were being met through specialized programs provided at day treatment centres were forced to abandon their French-language education when they reached the age of 13.

Those programs, which are designed to provide instruction to school-age children and youths who cannot be integrated into a regular classroom, are essential to the development of tomorrow's adults and their full participation in society.

In the Commissioner's view, being Francophone should not be an obstacle for young people who are already struggling with social, behavioural, emotional or psychiatric disorders. For that reason, he recommended that the **Ministry of Children and Youth Services** take all available steps to ensure availability of day treatment education programs for Francophones aged 13 to 18 in Toronto by the beginning of the 2011-2012 school year.

The Commissioner had high hopes that this recommendation would come to fruition, since, apart from funding, everything was in place for a favourable outcome: young people waiting, collective will, accommodations and a clear start-up protocol from the **Ministry of Education**.

However, at the time this annual report was written, the Commissioner's and many parents' desire for an educational support continuum for Francophone children and youths with special needs in Toronto had not yet materialized.

The Ministry of Children and Youth Services certainly affirmed its commitment to ensuring that young Francophones have access to the necessary programs and assured the Commissioner's Office that it was working with service providers toward that goal.

The Commissioner has no doubt of the Ministry's goodwill, but he feels obliged to express his disappointment, since, in the final analysis, everyone was of the same mind and the amounts of money involved were negligible. In short, there was fertile ground for a solution — even a temporary one —, but it would seem the inequality affecting Francophones was not blatant enough for officials to take immediate action.

And that is the concern, as the trivialization of Francophones' needs is a very real obstacle to the development and implementation of sound and well-crafted government programs.

3.3 JUSTICE AND PUBLIC SAFETY

3.3.1 Access to justice in French

Since having taken the position in 2007, the Commissioner has demonstrated a keen interest regarding access to justice in French, given that it is a fundamental right for Francophones who are parties to a judicial proceeding in Ontario to assert their rights in the official language of their choice.

In his Annual Report 2008-2009 (section 4.2), the Commissioner presented a solid analysis of the issue of barriers to access to justice in French, from administrative flaws to the shortage of bilingual judges and the inequality of French in administrative tribunals.

The Commissioner is pleased by the government's willingness to modernize its judicial services by offering some services online, as indicated in the 2012 Ontario Budget.[39] If it is simpler for members of the public to file certain legal forms and documents or to pay certain fees online, it follows that it would also be easier for them to do so in the official language of their choice, either in English or in French. The Commissioner will ensure that a citizen's choice of official language follows him or her throughout the judicial process, without excluding the possibility of changing languages along the way, if appropriate.

In his 2008-2009 Annual Report, the Commissioner recommended the formation of a committee of legal experts to increase the knowledge of members of the judiciary with respect to language rights and to propose courses of action leading to the appointment of bilingual judges.

Since then, the **Ministry of the Attorney General** has established a bench and bar committee that is working hard on the issue, but while awaiting the results of its efforts, the Commissioner's Office continues to receive worrisome complaints.

[39] *Ibid.*

The Commissioner cannot ignore a case that made the newspaper headlines. This year, a complainant approached the Commissioner's Office for help. After asking employees of the Ministry of the Attorney General for advice on how to ensure that her case would be heard in French in Superior Court – which is any citizen's right, no matter where he or she is in Ontario — the complainant was misinformed regarding the process and found herself in pre-trial proceedings before an English-speaking judge, who denied her request for a trial in French.

Since the decision was made by a judge, the complainant's only recourse was to appeal, which she did. In the end, the judge's decision was overturned. But the complainant had to fight tooth and nail and incur considerable expense just to obtain recognition of her right to be heard in French, a right that is spelled out unambiguously in the *Courts of Justice Act*. And sadly, at the time that this annual report was being written, the complainant's linguistic saga was still not over.

In this case, the Commissioner would have a great deal of difficulty convincing that complainant of the equality of Francophones before the law in Ontario. The Ministry needs to be more sensitive to the potential for staff error to result in such a perception of inequality.

Other problems have been brought to the Commissioner's attention over the years, including the fact that certain rules of procedure, despite their solid grounding in law, are disadvantageous to Francophones because of the lack of bilingual judges. Examples include subrule 17 (25) of the *Family Law Rules*, which requires that a trial for the protection of a child be conducted by a different judge from the judge who conducted the settlement conference on the issue; subrule 12.06 (1) of the *Rules of Civil Procedure*, which requires that leave to appeal be obtained from a judge other than the judge who made the order; and rule 13.08 of the *Rules of the Small Claims Court*, which states that a judge who conducts a settlement conference in an action shall not preside at the trial of the action.

In short, many rules of procedure and administrative directives require the intervention of more than one judge. This creates additional demand for bilingual judicial resources.

For the moment, the Commissioner can only urge people who file complaints about the lack of access to justice in French to be patient, but he eagerly awaits the conclusions of the **Bar and Bench Committee** for concrete solutions to the serious equality problems that desperate Francophone parties to proceedings are bringing to the Commissioner's attention.

3.3.2 Supervised visits

The Supervised Access Program is a **Ministry of the Attorney General** program to provide a safe location where parents can rebuild or maintain their emotional relationship with their child, in the presence of a supervisor who prepares reports on his or her observations. A court may order supervised visits if, for example, there are conflicts between parents who are in the process of obtaining a divorce.

The Ministry contracts out administration of the program to community organizations. The contracts include best practices related to the provision of services in French — as opposed to requirements. Thus, the conditions of the supervised visits are left to the discretion of the community organizations.

In other words, if an organization does not have any supervisors who understand French, Francophone parents and children have no choice but to converse in English, whether they are in a region designated under the *French Language Services Act*, unless ad hoc arrangements are made for a French-language interpreter to be present during these visits.

> "Forcing me to obtain the right to speak to my child in French from my ex or a court is mind-boggling. But it was made clear to me that the centre has the power to take away my visiting rights. Who would dare force the issue? So we speak English when we're together. We have no choice."
>
> Stéphanie Boutet-Fréchette

In the past, the handful of parents who had the courage to file a complaint with the Commissioner's Office were able to obtain, through the latter's intervention, the services of an interpreter to translate the conversations between Francophone parent and child for the supervisor. This case-by-case solution was far from ideal, but it at least helped resolve some problems in the short term.

This year, however, following similar complaints, the organizations responsible for supervised visits began asking Francophone parents to obtain their former spouse's agreement to speak French to their child, and, in case of refusal, to return to court to apply for an order authorizing the use of French as the language of communication between parent and child.

The Commissioner's Office objects to this practice, which violates natural justice in several respects: (i) obtaining supervised visits in French now requires extraordinary efforts by a parent in a vulnerable situation, (ii) a parent's fundamental right to speak French to his or her child is subject to the discretion of a person with whom the parent is in conflict, and (iii) the Francophone parent is forced to go to court to obtain an order confirming the legitimacy of a fundamental right.

The Commissioner's Office would have like to have solved the problem once and for all this year. However, talks with Supervised Access Program officials revealed that, according to their contracts, centres may refuse to provide services in French due to a lack of bilingual staff or insufficient financial resources. For the Commissioner, these reasons to deny French-speaking families their rights are simply unacceptable.

The Commissioner is well aware that the community organizations' top priority is the child's welfare and that they often have to deal with sensitive situations. However, he is also of the view that a parent's desire to speak to his or her child in his or her mother tongue represents a desire to preserve an emotional bond with the child and is in the child's best interests.

Administrative inconvenience is no excuse.

The Ministry of the Attorney General is exploring possible solutions and feels that the implementation of Ontario *Regulation 284/11*, which requires third parties to provide service in French in accordance with the *French Language Services Act*, will solve the problem, at least in designated regions. Thus, the Commissioner's Office has no choice but to be patient, since full implementation of the Regulation will not take place until July 1, 2014 (see Chapter 1, section 1.5).

3.3.3 Ontario Provincial Police Communications Centre

The **Ontario Provincial Police (OPP)**, an arm of the **Ministry of Community Safety and Correctional Services**, plays an essential role in protecting citizens across the province, by providing police services to municipalities that do not have their own police forces, conducting or supporting major investigations, and ensuring traffic safety on provincial highways, to name only a few of its functions.

Under the *French Language Services Act*, the OPP is required not only to provide services in French in designated regions but also to ensure that its central services are equally accessible for both Francophone and Anglophone citizens.

This year, a citizen raised a problem that rang alarm bells for the Commissioner's staff: fearing that he had been a victim of fraud, the citizen called the OPP's toll-free number, which is prominently displayed on its website, to report a suspected swindle. However, no one at the toll-free number was able to speak to him in French. He was therefore forced to try to get by in English. It is not easy to find the right words in your second language when your stomach is in knots…

> "I wanted to report a possible fraud to the OPP. So I dialed their toll-free number and, to my great surprise, no one was able to take my statement in French!"
>
> Guy Desjarlais

The Communications Centre is the 24-hour access point for the OPP.

Analysts in the Commissioner's Office called the Communications Centre themselves and the results were unsatisfactory. One analyst who requested service in French was transferred to an OPP Provincial Communication Centre. Unfortunately, staff at this Centre did not comply with OPP standard operating procedures, and thus, the analyst was unable to obtain services in French.

Maintaining law and order is a demanding job, as the Commissioner knows very well. However, a call centre responsible for receiving communications that are important to public safety from citizens in every part of the province has to be able to handle calls effectively in French.

It is an obstacle to French citizens that would be easy to remove. The OPP says it has taken steps to address this issue and to ensure compliance with standard operating procedures and provision of quality services in French throughout OPP Communication Centres.

3.3.4 Parking infractions

The *Provincial Offences Act* is a law that establishes the procedure for proceedings in cases of non-criminal regulatory offences, such as parking infractions.

The Commissioner's Office continues to receive complaints from Francophone citizens who receive parking infraction notices in English only. Since it is clearly stated in the notices that the underlying law concerned is the *Provincial Offences Act*, those citizens feel that they have the right to be informed of the charges against them in French, and if applicable, to dispute them in French.

For several reasons, however, Francophone citizens who receive parking tickets often have their cases dealt with in English from beginning to end.

Ontario municipalities have been responsible for responding to parking infractions since the mid-1980s. In the late 1990s Ontario transferred the responsibility for administering the courts that hear provincial offences, including parking infractions and responsibilities for prosecuting some provincial offences to municipalities.

Parking infractions have special status in Ontario: they are governed by *Ontario Regulation 949* (which is still in English only), made under the *Provincial Offences Act*, which gives municipalities the power to decide whether they will use English and/or French as the language of communication with citizens concerning parking infractions, util a trial has been requested.

The result? It is perfectly legal for citizens to receive a "parking ticket" that is in English only, even if they are in a designated region and they are not entitled to service in French if they visit the municipal parking infractions office to pay the fine or dispute their charge, because those administrative processes are a municipal responsibility.

What's more, if they fail to respond quickly enough to the infraction notice, they would receive from the municipality a Notice of Impending Conviction or a Notice of Fine and Due Date in English only.

Of course, if Francophone citizens are fluent enough in English to understand all the information on the infraction notice, they may then ask to have a trial heard in French, in accordance with the *Courts of Justice Act*, no matter where they are in Ontario. The hitch? They may be asked to make the request using an English-only form, and if the municipal court office makes a mistake, they may be informed of the hearing's location and time in English.

As the Commissioner mentioned in his 2009-2010 Annual Report, when the Ontario government turns responsibilities over to the municipalities, the purpose is to take advantage of a system that can provide service delivery improvements.

The Commissioner's staff continue to cut through the complexities of municipal parking infractions processes and explain them to complainants. The hope is that the **Ministry of the Attorney General** will take concrete action to remedy these problems.

3.3.5 Translation of Ontario regulations

In order to be enacted into law, provincial legislation must be bilingual; this is not the case for the Ontario regulations. As a result, many of these regulations exist in English only.

The Commissioner addressed this issue in his 2008-2009 report, and had recommended that the **Ministry of the Attorney General** exercise its leadership in order to develop and apply criteria for translating regulations, so that the Francophone population in Ontario could have full access to the texts which are primarily responsible for governing their daily lives in sectors such as healthcare, safety and community development.

In 2009-2010, the Ministry confirmed its commitment to satisfying the expectations of the Commissioner and proposed a two-phase approach: (i) the adoption of translation criteria and a policy for implementation, and (ii) development and implementation of a strategy for the gradual translation of existing regulations. In 2010-2011, the Ministry confirmed that it was continuing these efforts.

Even though progress in this regard may seem slow, patience is essential: the translation of a legislative corpus is a delicate and ambitious exercise that should not be taken lightly.

In fact, last year, the Commissioner expressed his satisfaction with the progress that had been achieved and maintains a similar opinion for this year for two reasons:

First of all, the Commissioner learned that the Ministry of the Attorney General has continued to work on developing an overall translation policy — for new regulations as well as for those that are already in effect — which could guide the various ministries in their efforts to choose the regulations to be translated, based on the criteria proposed by the Commissioner.

The Commissioner also learned that the ministry has devoted substantial investments in human and financial resources, which have enabled the Ministry to make significant progress: Whereas the proportion of bilingual regulations in 2011-2012 was less than 40%, the ministry expects their number to increase to over half in 2012-2013. Thus, the number of unilingual regulations will have been reduced by more than 10%.

The Commissioner applauds the Ministry's efforts both upstream in the process (prioritizing an overall translation policy) and downstream (translation of unilingual regulations already in effect), and hopes that this breakthrough heralds an era where regulations that are of public interest are systematically prepared in English and French.

3.4 HEALTH

Health is an important portfolio for the Commissioner's Office, not because health workers are indifferent to Francophones' needs — far from it! — but because it is such a huge sector (as shown by its large share of the provincial budget) and because its services are so critical to citizens'

well-being and lives that there are inevitably urgent complaints, which require vigorous action.

The sections below contain descriptions of some problems in the field of health that have been brought to the attention of the Commissioner's Office in the last few months. In particular, the problems illustrate the system's shortcomings in incorporating Francophones' needs into the decision-making and care delivery processes.

These incidents should not be viewed as a series of criticisms of the health system. In fact, the Commissioner is proud to report on the fine progress made since the publication of his *Special Report on French Language Health Services Planning in Ontario, 2009*.

The Commissioner intends to continue his constructive dialogue with the very receptive stakeholders in the health sector. He is confident that working with them to devise solutions will produce not only tangible, long-term improvements in health-care access and planning for the Francophone community but also efficiency gains through the elimination of linguistic and cultural barriers.

3.4.1 Investigation report on the Influenza A (H1N1) pandemic

In May of 2011, the Office of the French Language Commissioner published its investigation report into a serious communications problem during the Influenza A (H1N1) pandemic in Ontario in 2009. This lengthy investigation focused on the publication of a unilingual English flyer during a campaign for the prevention of the influenza pandemic and included an assessment of the measures taken by the government to ensure that this situation would not happen again. It should be recalled that the announcement of the Commissioner's investigation prompted the government to adopt a Management Board and Treasury Board directive that requires all ministries and classified agencies to take into account the specific expectations and needs of the Francophone community when planning their communications activities.[40]

In the investigation report, we learn that one year after it was adopted, the new directive had already produced observable results, in particular, thanks to a series of mandatory training courses offered by the **Office of Francophone Affairs** to the communications teams of all the ministries.

Nevertheless, the Commissioner believes that certain aspects of this directive and its guidelines leave room for improvement. In his report, the Commissioner has therefore presented four recommendations to the government designed to (i) clarify the wording in the directive, (ii) ensure that government communications using social media are posted simultaneously in English and French, (iii) continue the training offered by the Office of Francophone Affairs to communications teams and to classified agencies, but on an ongoing basis, and (iv) offer the same training to all policy development teams, programs and services of all the ministries and classified agencies.

The government has informed the Commissioner that it would take these recommendations into account.

3.4.2 Devolution of health care

In 1998, in response to a recommendation by the Ontario Health Services Restructuring Commission, the provincial government initiated the process of transferring psychiatric hospitals to the public hospital system. The aim of the transition was to provide better integration of mental health services and address patients' needs more effectively by relying on community-based services. The transfer process was completed in 2008, when the Mental Health Centre Penetanguishene, a 312-bed facility in the **North Simcoe Muskoka Local Health Integration Network (LHIN)**, became part of Ontario's public hospital system.

In 2011, the hospital adopted a new corporate image and changed its name to Waypoint.

The unilingual new name did not bode well.

Shortly after Waypoint's inauguration, the Commissioner's Office heard reports of a serious degradation in French-language services at the facility, which had otherwise an excellent reputation in the community.

Before the transfer, the Mental Health Centre Penetanguishene, as a government-run institution designated under the *French Language Services Act*, had introduced policies and procedures to meet its obligations to provide service in French.

According to the complainants, however, the situation at the new Waypoint facility was quite different: French seemed to have vanished, in particular from the institution's signage and website.

The investigation by the Commissioner's Office revealed that, when the Mental Health Centre Penetanguishene was transferred to the public hospital system, the inclusion of formal obligations to provide French-language services was simply "forgotten."

When advised of the problem, the **Ministry of Health and Long-Term Care** readily admitted its mistake and responded quickly. To prevent a recurrence of the problem, it revised

[40] Office of the French Language Services Commissioner, *An Investigation Report Regarding an English-Only H1N1 Flyer. From Communication Crash to Communication Coup*, Toronto, 2011, p. 19.

and updated its existing policies, plans, procedures and protocols regarding French-language services. And to remedy the situation at the institution itself, the Ministry pledged to organize information sessions for all staff concerning the requirements associated with the old designation under the *Act*. It also encouraged Waypoint to have its website translated.

The Ministry stated that the situation would be corrected when the agreement between the institution and the ministry was renewed.

The Commissioner applauds the Ministry's efforts to repair the damage. Nevertheless, if someone had thought about Francophones at the beginning of the process (the phrase "upstream integration" leaps to mind once again), it could have avoided a time- and energy-consuming complaint, the interruption of French-language services, and the tarnishing of a well-known institution's reputation. A short, simple clause in a transfer agreement would have made all the difference!

3.4.3 AIDS and HIV

In the past year, the Commissioner's Office has received a number of complaints from residents of the Greater Toronto Area and Ottawa concerning the lack of French-language services for people living with HIV or AIDS. The complainants alleged that when they approached community support organizations – largely funded by the Ontario government – they did not receive adequate, equivalent service in French.

Not all the complainants were necessarily decrying a total absence of service. A number of them were greeted or provided with guidance in French. But the linguistic duality seldom went beyond the reception desk. And when it came to actually supporting the person living with HIV or AIDS, the services were available only in English (counselling, help finding a residence, etc.).

People living with HIV or AIDS are literally fighting for their lives, and they have to both share and understand complex, sensitive information. They have to be able to describe physical and mental conditions, symptoms and side effects in precise terms. They have to receive and understand critical advice regarding lifestyle, the legal and health consequences of certain practices, how to obtain long-term and emergency assistance, and how to take medication.

Clearly, explaining or understanding such nuances in one's second language requires intellectual gymnastics, and Francophones living with HIV or AIDS are sick of being linguistic acrobats when they are already dealing with all sorts of challenges. They therefore sought the assistance of the Commissioner's Office to exercise their right to a continuum of social and therapeutic guidance in French.

The Commissioner's Office naturally wanted to shed light on this apparent inequality and conducted an investigation. Its findings were not very flattering.

On one hand, the **Ministry of Health and Long-Term Care** stated that, although organizations operating in the HIV/AIDS sector were in fact supported with public funds, they have no legal obligation to provide service in French because they are not government agencies and do not provide services on the government's behalf.

On the other hand, the Ministry pointed to the many actions it had taken to improve services for Francophones living with HIV, even though those actions amounted to nothing more than having provincial awareness campaigns translated and funding some information, testing and training events.

Though commendable, those efforts do not solve the fundamental problem raised by the complainants, which is the lack of tailored support services in French to help Francophones deal with their illness and the wide-ranging medical, personal and social repercussions that it has in the long term.

The Ministry advised the Commissioner that it was working on a provincial HIV/AIDS strategy and in the same breath hinted that the matter was outside the purview of the Commissioner's Office.

The Commissioner obviously does not claim to be an expert in health policy. However, he is an expert in the language rights of Ontario's Francophones, and he intends to make sure that people who every day deal with a disease that brings them face to face with abandonment, stigmatization, pain and even the end of their lives can count on an organization partly paid out of their pockets through the government, to meet their needs.

He therefore hopes that the strategy being developed by the Ministry will fully integrate French-language services from the start ("upstream," to use the proper expression) and will include not only comprehensive obligations in that regard for government-funded partners but also the incorporation and adequate funding of Francophone organizations that are fully empowered to provide services to people living with HIV and AIDS.

3.4.4 Public health units

In his two previous annual reports, the Commissioner examined the lack of French-language services in some of Ontario's public health units, which carry out programs largely funded by the **Ministry of Health and Long-Term Care**.

The problem stems from the fact that Boards of Health are "local boards" as defined in the *Municipal Affairs Act* which

exempts them from the obligations imposed on government agencies under the *French Language Services Act*.

The Commissioner finds this pill hard to swallow.

In his view, if a program that supports citizens' well-being is partly or fully funded with provincial money, its delivery must adhere to government standards, including those related to French-language services.

That is why the Commissioner recommended in 2009-2010 that the Ministry require public health units to implement the *French Language Services Act* in those circumstances. And that is also why, unsatisfied with the progress made, he revisited the issue in his 2010-2011 report.

The message seems to be getting through: last year, the Ministry reminded all of the province's medical officers of health that, under Ontario's public health standards, public health programs and services had to be tailored to meet the needs of target populations, including Francophones, and that it was providing them with the necessary resources to ensure effective delivery of services in French.

The Commissioner considers this a step in the right direction and, on the basis of his discussions with officials of the Ministry of Health and Long-Term Care, he can say that the Ministry is determined to achieve equality in the delivery of public health services to Ontario's Francophones.

However, until the Ministry's efforts come to full fruition and the public health units' actions reflect a genuine sensitivity to the needs of Francophones, the Commissioner considers the issue as a wound which has yet to heal.

3.4.5 French-language health services follow-up

In 2009, the Commissioner drew much needed attention to the plight of Francophones in the area of health care by dedicating his first special report to this issue. The *Special Report on French Language Health Services Planning in Ontario*[1] outlined the difficulties that Francophones face in navigating a health care system that does not adequately take into account their specific characteristics. It also revealed that Francophones have an inadequate access to French-language health services and that this problem was due, at least in part, to a lack of French-speaking health professionals, an absence of active offer of health services in French and an inadequate integration of Francophones as partners in the health care system.

The Commissioner's report also underlined the need to improve planning and governance of health services in order to make them more accountable, efficient and effective. In order to address these pressing issues, the Commissioner proposed eight recommendations to the **Ministry of Health and Long-Term Care**.

Since the release of this special report, the Ministry has brought about important changes that satisfy many of the Commissioner's recommendations. Among these are vital improvements regarding governance and planning, including the appointment of French Language Service Coordinators within each Local Health Integration Network (LHIN) and the naming of six French Language Health Planning Entities. Working together, these not-for-profit administrative bodies have opened up new opportunities to engage the Francophone community, integrate its needs and be accountable for their actions both at the local level and within the Ministry of Health and Long-Term Care.

Moreover, the Commissioner is encouraged by some recommendations regarding health care presented by the Commission on the Reform of Ontario's Public Services, chaired by economist Don Drummond. Indeed, the Commissioner supports the suggestion that the government should reassume responsibility for the public health sector, in particular by giving more power to the LHINs, since the latter are already working closely with the new French Language Health Planning Entities. And the 2012 Ontario Budget shows promise in terms of the government's willingness to continue moving in this direction.

These new entities must be given time to grow and develop so that they — along with the province's LHINs — can eventually hit their stride. And the Commissioner believes that they will, by presenting recommendations directly to the LHINs and by making public their suggestions for improvements to French-language health care services. Indeed both administrative bodies share the same obligations in terms of accountability to the public, notwithstanding the fact the LHINs must bear the responsibility for their final decisions.

The Ministry has also made strides in considering the unique characteristics of the Francophone community in its decisions as reflected by the improvement and expansion of primary care services in the Peel-Halton region with the opening of a bilingual site of the Credit Valley Family Health Team. Moreover, the Ministry also decided to include the ability to offer French-language services as a selection criterion of new Family Health Teams such that more than half of theses teams announced in 2010 weare able to provide health services in French.

In addition, the law governing Community Care Access Centres was amended to require these centres to take all

[1] Office of the French Language Services Commissioner, *supra* note 16.

reasonable measures to ensure that Francophones can avail themselves of the right to receive services in French.

Finally, the Ministry has engaged in initiatives with key Francophone researchers in the province to improve its research capacity for policy and program development.

For instance, in 2009, the Ministry supported a Francophone Applied Health Research Network Initiative (AHRNI) study conducted by the Francophone Health Research Team of the *Réseau de recherche appliquée sur la santé des francophones de l'Ontario* — an open network of researchers associated with the Faculty of Health Sciences at the University of Ottawa. The study will focus on various issues such as (i) the monitoring of health status and its determinants in Francophone communities in Ontario, (ii) specific needs related to health services in Ontario Francophone populations and health-care professionals offering health services in French, and (iii) models of care and the performance of the health care system in a linguistic minority setting.

The Ministry also analyzed the data of the Canadian Community Health Survey to gain a better understanding of the health status of Franco-Ontarians. Together, these endeavours and findings will inform policy and program development and help identify future research priorities. Moreover, the Health Equity Impact Assessment Tool (HEIA) — a decision support tool that helps identify how a program, policy or similar initiative will impact population groups in different ways — now includes a French Language Services component. French Language Health Planning Entity leads and LHIN French Language Services Coordinators will be trained more extensively on how to use this tool in the coming year.

In light of these and other important changes, the Commissioner is pleased with the overall advances made in French-language health planning by the Ministry since the release of his special report. In its response to the Commissioner's report, the Ministry underlined that many of these recent initiatives will have broader long-term implications.

Thus, the Commissioner looks forward to seeing tangible improvements in the planning of — and access to — French-language health services in the coming months and for years to come… as there will always be room for better planning and improved, integrated services.

3.5 LAND AND RESOURCES

As mentioned in the introduction to this chapter, difficulty obtaining French-language services is sometimes considered "a minor glitch" by government bodies, which seem to think that requests for service in French are simply administrative complications standing in the way of their "primary mission" (e.g., protecting the environment, promoting energy conservation, etc.).

This thinking is incompatible with public service; ministry objectives cannot take precedence over government regulations. Tolerance of a structure that puts Francophones at a disadvantage, or that prevents them from participating fully in initiatives to protect our natural environment and our resources, is indicative of a *laissez-faire* attitude toward the application of the *French Language Services Act*.

For this reason, when Francophones complain that they are not being addressed in their language by one of the government's flagship programs, the Commissioner takes it very seriously.

3.5.1 Ontario Power Authority

This year, the Commissioner's Office continued to receive complaints from Francophones who had received English-only coupons from Ontario Power Authority for rebates on the purchase of energy-efficient appliances. For these complainants, the message was clear: if you want a rebate, you have to speak English!

This problem is a perpetuation of the problems raised by the Commissioner in last year's Annual Report with respect to Ontario Power Authority and other energy corporations created under the *Electricity Act*. These bodies claim that they are not subject to the *French Language Services Act* and continue to communicate with their clients in English only.

It goes without saying that, in the Commissioner's estimation, communication in support of initiatives of the Government of Ontario, such as energy conservation, that are prepared or led by bodies with a public mandate and that are designed for all Ontarians, must be bilingual.

In last year's annual report, the Commissioner recommended that the **Ministry of Energy** proposed to amend the *Electricity Act* to make Ontario Power Authority and all other current and future entities created under this act subject to the *French Language Services Act*, insofar as their programs, services, and communications targeting the general public were concerned.

In response to the Commissioner's recommendation, the Ministry of Energy confirmed its commitment to respecting the letter and spirit of the *French Language Services Act*. In the same breath, it reiterated that entities created under the Electricity Act were exempt from the obligations created by the *French Language Services Act*.

The Ministry stated that "our [sic!] agencies are committed to also respecting the spirit of the law." In support of this statement, it provided a list of measures that had been taken

during the year by Ontario Power Authority to re-orient its saveONenergy Campaign. (The government's response can be found in Appendix A.)

It added that it planned to collaborate with "its" agencies to identify more formal mechanisms so that the spirit and intent of the *French Language Services Act* are respected.

The Commissioner finds it difficult to understand the Ministry of Energy's inability to act, in spite of having recognized its ownership of these agencies. He will continue to wait patiently to see whether good intentions will be enough to instill a permanent awareness of the needs and expectations of Ontario's Francophones in Ontario's energy corporations.

3.5.2 Waste Diversion Ontario

Last year, the Commissioner noted that many citizens had contacted his Office to demand service in French from not-for-profit corporations mandated by the *Waste Diversion Act, 2002* to divert waste, such as tires, cell phones, and batteries, which would otherwise end up in a landfill.

These waste diversion programs are funded and operated by industry funding organizations that collect fees from stewards, largely manufacturers and importers, who have a commercial connection to a designated waste or a product from which a designated waste is derived. Manufacturers and importers often pass these costs along to retailers, who may, in turn, pass them along to consumers.

Industry funding organizations are created under the *Waste Diversion Act, 2002* by Waste Diversion Ontario (WDO), which was also created under the Act. WDO supervises the development and operation of designated waste diversion programs.

In spite of the fact that Ontario consumers end up paying the cost of recovering products designated by the **Ministry of the Environment**, the industry funding organizations do not provide documentation or services in French. They are able to do so with impunity because of their legal status.

The Ministry of the Environment basically washed its hands of any responsibility for the operation of WDO and the industry funding organizations, stating that it had very little oversight over these bodies.

The Commissioner saw the situation differently: he stated that corporations created in application of a provincial statute to carry out key government priorities and objectives had to understand that their operation came with a responsibility to deliver French-language services.

Francophone citizens have the same right as Anglophone citizens to receive detailed information on the eco-fees they pay at the cash register for the diversion of hazardous waste materials, the drop-off locations for the disposal of used cell phones, and so forth. In fact, they have the same right to information on all aspects of waste diversion programs mandated by the Government of Ontario — programs in which they are legally and socially required to participate.

In his Annual Report last year, the Commissioner therefore recommended that the Ministry of the Environment ensure that Francophones had at their disposal, in French, all of the information they needed to fully participate in the province's waste management programs, by requiring the industry funding organizations to comply with the *French Language Services Act*.

The Ministry of the Environment's response to the Commissioner's recommendation was rather terse. The Ministry agreed with the Commissioner on the importance of providing Francophones with information, in French, on the waste management programs and furthermore stated that it would continue to communicate with the public in English and in French regarding these programs. (The government's response can be found in Appendix A.)

In other words, the Ministry will... meet its obligations.

This response is convenient.

And it ends with, what can best be summed up as, an *intention* to encourage the operators of these waste diversion programs to respect the rights of Francophones.

Clearly, the current state of affairs is unacceptable to the Commissioner. He is adamant that entities created under a provincial statute for the purpose of carrying out provincial initiatives have an obligation to comply with the *French Language Services Act* and, therefore, to communicate with members of the public in French and English. At the very least, these agencies are legally regarded as third parties and should therefore have obligations under the new *Regulation 284/11*.

It is time for the Ministry of the Environment to put "logical" back into "ecological" and take the necessary steps to ensure that Francophones feel fully respected by the programs that come out of agencies created by the government.

3.6 THE ECONOMY AND CENTRAL AGENCIES

3.6.1 Municipal Property Assessment Corporation

In last year's annual report, the Commissioner noted that, in order to address the issues raised by the Francophone community concerning services delivered by the **Municipal Property Assessment Corporation** (MPAC), all stakeholders would have to work together.

His comments were not made in vain.

In March 2012, the Commissioner's Office announced that it had signed a memorandum of agreement with the Municipal Property Assessment Corporation that would make it possible to improve the quality of the French-language services that MPAC offered and to expedite the complaints resolution process.

In this memorandum, MPAC confirmed its commitment to handle any complaint, regardless of its nature, within five business days.

The Commissioner's Office commends the Municipal Property Assessment Corporation for its willingness to offer high-quality, accessible, and courteous service in French. In addition, the Commissioner is convinced that this new proactive approach will be of benefit to all of Ontario's Francophones.

3.6.2 French-language community radio

In April 2011, the Commissioner's Office published *A study of Ontario's French-language community radio stations. Key components of the vitality of Francophone communities*,[40] which pointed to a lack of government support for these radio stations.

This study was prompted by a letter from MICRO *(Mouvement des intervenants et des intervenantes en communication radio de l'Ontario)* that raised a number of concerns, one of which was the lack of financial support from the provincial government for Francophone community radio stations since 1995. This date coincides with the abolition of the Community Radio Ontario program.

In his study, the Commissioner recognized that role that French-language community radio plays in the vitality and development of Ontario's Francophone community. He suggested a number of possible solutions, including government support that was deemed to be appropriate and desirable.

The Commissioner made a recommendation in which he asked the government to develop a new study that would result in an accurate portrait of the situation of Ontario's French-language community radio stations and that would propose concrete, permanent solutions to meet the specific needs of Francophones in the area of community radio.

The Commissioner received a response from the government acknowledging that the problems he had raised were important. Thus, the government asked the **Office of Francophone Affairs**, in partnership with *Groupe Média TFO*, to draw up a new portrait of the consumption habits of Franco-Ontarians of all types of media, including radio, community radio, social media, the Internet, newspaper and television.

The Commissioner is delighted that the government has responded favourably to his recommendation, however, an action plan and a timeline have yet to be developed for this project. The Commissioner plans to monitor this situation closely.

3.6.3 Elections Ontario

The elections held on October 6, 2011, gave rise to a dozen complaints over the lack of availability of French-language services. The Commissioner considers this to be a small number, given the provincial scope of the election process and **Election Ontario** should be credited for this.

Most of the complaints were over a lack of bilingual staff within the province's 940 advance polling places and 24,479 regular polling places on Election Day. This is unfortunate, because Elections Ontario did everything in its power to recruit the staff it would need to meet its obligations, where French-language services were concerned.

In his blog on September 9, 2011,[41] the Commissioner encouraged Francophones to apply for one of 80,062 election staff positions for the upcoming elections.

The Commissioner adopted a proactive approach to the provincial election, signing a memorandum of agreement with the Chief Electoral Officer of Ontario, Greg Essensa, to expedite the complaints resolution process.

However, because the demand for bilingual election officers will always exceed the offer, Francophones will have to make

[40] Office of the French Language Services Commissioner. *A study of Ontario's French-language community radio stations: Key components of the vitality of Francophone communities*. Toronto, 2011. Available online: http://www.flsc.gov.on.ca/files/files/French-Language-Community-Radio-Study.pdf (page consulted in April 2012).

[41] Available online: http://www.csf.gouv.on.ca/blogue/?p=2333&lang=eng (page consulted in April 2012).

an effort in order for things to improve. The Commissioner addressed this issue in his 2010-2011 Annual Report entitled *A Shared Engagement*, stating that, sometimes, securing French-language services requires a commitment on the part of Francophone citizens.

3.7 CONCLUSION

In Chapter 3, the Commissioner has described some of the issues addressed by his Office in 2011-2012. As can be seen, a great deal was accomplished, not only by the Office team, but also — and primarily — by directors and public service staff who had been called on to help their agency to correct problems that have been brought to their attention.

As mentioned in the introduction, it is not the Commissioner's intention to criticize the progress that has been made over the years. Quite the contrary! The Commissioner's goal is to ensure that progress is indeed made. And the final chapter of this annual report is a testament to this end result as it is positively brimming with success stories.

That said, the Commissioner is a watchdog for the language rights of Francophones. And like any good watchdog he will growl at the first signs of suspicious behaviour, as this amply illustrates. The Commissioner's canine instincts are sharp and he will always be mindful of abrupt and unexpected gestures. In other words, he will always be on the lookout and looking straight forward.

He is thus steadfast in his commitment to criticize situations that stand in the way of acheiving the vision of the Commmissioner's Office, which is "to ensure active, integrated delivery of French-language services in support of the development of the Francophone community and Ontarian society."

If the Commissioner has to bare his teeth, he will. But he has always believed that honey works better than vinegar.

He hopes that the work of the Office will make every member of the Ontario Public Service understand one very simple message: violations of the *French Language Services Act* are not simply an attack on the Francophone identity. They are an injury that causes our province to lose an essential part of its substance.

"[...] violations of the *French Language Services Act* are not simply an attack on the Francophone identity. They are an injury that causes our province to lose an essential part of its substance."

Statistical data

4.1 COMPLAINTS RECEIVED IN 2011-2012

IN 2011-2012, THE COMMISSIONER'S Office received 371 complaints (Table 1). In absolute terms, that is a slight decline relative to 2010-2011. However, in 2011-2012, there was an increase in the number of individual complaints received by the Commissioner's Office. Those complaints cover a very wide range of problems and concerns compared with the previous year. The issue of the lack of French-language schools in the Greater Toronto Area alone generated 70 complaints in 2010-2011, which was not the case in 2011-2012.

4.1.1 Complaints by category

Of the 371 complaints received in the past year, 308 led to an investigation and 254 were deemed admissible. This represents nearly 70% of the total number of complaints received during the period, while 63 complaints were determined to be inadmissible. The latter figure is somewhat higher than the 2010-2011 count of 53 complaints.

TABLE 1

COMPLAINTS RECEIVED BETWEEN APRIL 1, 2011 AND MARCH 31, 2012

	NUMBER
Investigated	**308**
Admissible	254
Other types of complaints	38
Low-impact	16
Inadmissible	**63**
Total	**371**

Inadmissible complaints (Table 2) are divided into five categories: Provincial, Federal, Municipal, Private sector, and Trivial/frivolous/vexatious/in bad faith. Inadmissible complaints in the Provincial category include cases dealing with non-designated regions, organizations not subject to the *FLSA* but under the government's control, or those affected by a government decision or restructuring of services. In fact, this category and the Municipal and Private sector categories together account for nearly 85% of the inadmissible complaints.

Inadmissible complaints are by no means devoid of interest. In many cases, the Commissioner's Office forwards them to the organizations concerned with the aim of suggesting improvements that, though outside the framework of the *Act*, would better reflect the spirit of the law or promote excellence in service to the public.

TABLE 2

INADMISSIBLE COMPLAINTS

Province	7
Federal	3
Municipal	17
Private	18
Frivolous/vexatious/in bad faith	18
Total	**63**

The Commissioner's Office also recorded a nearly twofold increase in the number of complaints in the "other types"[44] category compared with 2010-2011. This category (Table 3) includes cases involving either independent bodies or entities created, mandated or funded by the government.

[44] Other types of complaints are difficult to categorize. They primarily concern the delivery of services where a member of the public has no other option because the agency has a monopoly on the service. These complaints are within the provincial government's purview and relate to agencies created or mandated by various ministries to offer programs and services that, in cases of devolution, were previously delivered by the province.

In 2011-2012, these complaints concerned primarily hospitals, identified agencies, partnerships or independent organizations that receive government grants. These cases were investigated, but they were not added to the statistics for government institutions.

TABLE 3

OTHER TYPES OF COMPLAINTS	
General	27
Subsidized	3
Partnership	8
Total	**38**

The Commissioner's Office received 254 ministry-related complaints in 2011-2012 (Table 4, page 44) in addition to the 158 complaints carried over from the previous year. Of the total, 315 complaints were resolved, of which 294 were deemed to be founded — a rate of nearly 95%. Nevertheless, the figures in these tables reflect the situation as it was on March 31, 2012. At the time of publication of this annual report, many of those complaints may have been resolved.

It is also important to note that of the 87 complaints remaining from 2009-2010, all have been resolved except two cases involving complex, systemic problems.

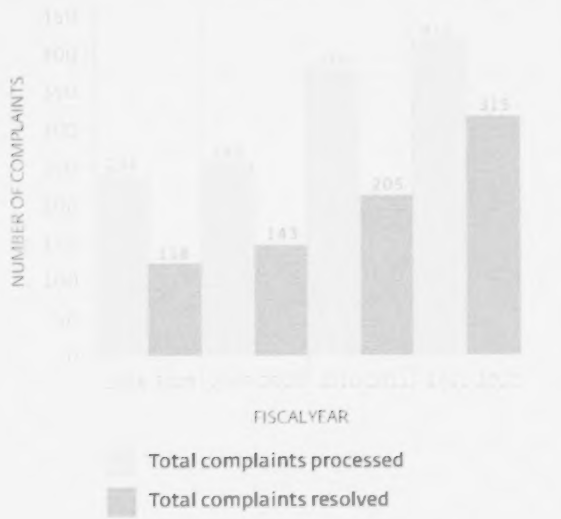
The key ministries that serve the public directly — the **Ministry of Health and Long-Term Care**, the **Ministry of the Attorney General**, the **Ministry of Education** and the **Ministry of Government Services** — account for more than half of the complaints received in 2011-2012.

4.1.2 Number of complaints processed and resolved

In 2011-2012, there was a significant increase in the number of admissible complaints processed by the Commissioner's Office: a total of 412. This total includes admissible complaints filed in 2011-2012 and admissible complaints carried forward from the previous year. That is a 10% increase from the 2010-2011 fiscal year (Chart 1).

CHART 1

NUMBER OF ADMISSIBLE COMPLAINTS PROCESSED BY YEAR



Source : Office of the French Language Services Commissioner, May 2012

Moreover, the number of complaints received and resolved increased by 35% in 2011-2012 compared to 2010-2011.

And finally, while the Commissioner's Office was created in 2007, the preceding comparative data excludes the year 2007-2008. Indeed, it should be noted that the 2007-2008 annual report recorded 62 complaints received from September 4, 2007 to March 31, 2008, a total recorded over a seven-month period.

4.1.3 Geographic distribution of complaints

The trend observed in previous years has not changed. While the geographic origin of complaints received in 2011-2012 does not precisely mirror the geographic distribution of Francophones in Ontario,[45] it is similar to last year's distribution. Central, Eastern, and Northeastern Ontario — regions with large concentrations of Francophones — had the highest volumes of complaints to the Commissioner's Office, as shown in Table 5.

The table also shows that almost 45% of all complaints came from Central Ontario, followed by Eastern Ontario with 44%

[45] According to the profile of Ontario's Francophone community published by the Office of Francophone Affairs in 2009, the size of the Francophone population varies from region to region. Nearly two thirds of Francophones live in Eastern and Northeastern Ontario (41.5% and 22.5% respectively), particularly in Champlain Township. Over 28% of Francophones live in Central Ontario, a third of them in Toronto, while Southwestern and Northwestern Ontario account for 6% and 1.5% of the Francophone population respectively.

TABLE 4

NUMBER OF ADMISSIBLE COMPLAINTS BY INSTITUTION

Institution	Complaints carried from 2010-2011	Admissible complaints for 2010-2012	Total number of complaints processed	On-going	Resolved	Founded	Unfounded
Designated agencies [45]	0	5	5	0	5	5	0
Legislative Assembly [47]	1	20	21	1	20	16	4
Ministry of Agriculture, Food and Rural Affairs	2	0	2	0	2	2	0
Ministry of the Attorney General	12	47	59	27	32	28	4
Ministry of Children and Youth Services	18	9	27	21	6	4	2
Ministry of Community and Social Services	1	9	10	3	7	6	1
Ministry of Community Safety and Correctional Services	3	8	11	1	10	8	2
Ministry of Economic Development and Innovation	2	1	3	1	2	2	0
Ministry of Education	60	19	79	2	77	76	1
Ministry of Energy	10	9	19	0	19	19	0
Ministry of the Environment	1	0	1	0	1	1	0
Ministry of Finance	11	18	29	5	24	22	2
Ministry of Government Services	11	19	30	8	22	22	0
Ministry of Health and Long-Term Care	12	54	66	15	51	48	3
Ministry of Infrastructure	1	0	1	0	1	1	0
Ministry of Labour	2	4	6	3	3	3	0
Ministry of Municipal Affairs and Housing	1	0	1	0	1	1	0
Ministry of Natural Resources	0	3	3	0	3	3	0
Ministry of Tourism, Culture and Sport	0	9	9	1	8	7	1
Ministry of Training, Colleges and Universities	5	4	9	5	4	4	0
Ministry of Transportation	2	14	16	2	14	13	1
Municipalities [46]	3	2	5	2	3	3	0
Total	**158**	**254**	**412**	**97**	**315**	**294**	**21**

[45] These complaints relate to agencies and institutions designated under the *French Language Services Act*.
[47] These complaints relate to entities that reports directly to the Legislative Assembly.
[46] These complaints are deemed admissible when they are brought against a municipality that has a bylaw that guarantees the provision of French-language services.

of total complaints. Nearly 8% of complaints originated in Northeastern Ontario. Together, Central and Eastern Ontario account for almost 90% of complaints received in 2011-2012.

TABLE 5

GEOGRAPHIC DISTRIBUTION OF COMPLAINTS, 2011-2012

Region	%
Central Ontario	45
Eastern Ontario	44
Northeastern Ontario	8
Northwestern Ontario	1
Southwestern Ontario	1
Out-of-province	1
Total	**100**

Finally, it is important to note that obtaining an accurate picture of the geographic origins of complaints is a complex undertaking because residents are highly mobile today and government services are provided in various forms made possible by new communications technologies. A person from Chapleau, for instance, may want to complain about the poor quality of French-language services in the North Bay area or unsatisfactory telephone service provided by an employee located in London. However, this table is based exclusively on the complainants' place of residence, a criterion that measures the Francophone community's awareness of the Commissioner's Office.

4.1.4 Information requests

In the period covered by this fifth annual report, the Commissioner's Office received a total of 50 requests for information on a wide range of topics. The majority of the requests had to do with French-language services, obligations specified in the *French Language Services Act*, and interpretations of the Act. Many citizens also requested information about the obligations of independent organizations and private businesses under the Act. Others contacted the Commissioner's Office for information on various Ontario government services.

Still others wanted statistical data on the Francophone community and information about the new regulation on third-party service providers (see Chapter 1, section 1.5).

The Commissioner's Office handled these requests within a reasonable timeframe by either referring the client to the appropriate office or providing the desired information.

Transformations within government

5.1 THE LETTER AND SPIRIT OF THE *FRENCH LANGUAGE SERVICES ACT*

THE GOVERNMENT OF ONTARIO has chosen the year 2015 to mark the 400 years of the French presence in Ontario. Sometimes, this important historical fact seems to be forgotten, but it must be remembered that Francophones have actively contributed to the development of the province by helping to building it, tilling its soil, and populating its territory. As mentioned in the first chapter of this report, the objective of the *French Language Services Act* is twofold, i.e., to protect the minority Francophone population in Ontario and advance the French language by promoting the equal status of French and English.

This goes beyond simply providing French language services. How these services are offered is also quite important and could make all the difference.

Over the last few centuries, the province's Francophone population has endeavoured to establish key institutions in all areas and sectors of human activity, in order to actively participate in the development of the Franco-Ontarian community. These institutions — whether they are related to healthcare, education, culture, the economy or any other sector — are litterally central to both individual and collective development. Individual development, because volunteering at an organization leads first and foremost to an accomplishment on a strictly personal level, by contributing to a cause in order to **make a difference**. Collective development, because this individual contribution strengthens feelings of belonging, not only to a cause that is meaningful to the individual but to the entire community as well. This is generally true, but particularly so, in the province's Francophone communities and institutions.

Indeed, these institutions offer services which are essential to the development of the community.

Sometimes, these institutions are strictly community institutions, sometimes they are government institutions. The Montfort case remains the best reminder of how government institutions can make all the difference in the development of a community. The Ontario Court of Appeal recognized that the hospital's institutional role was much broader than simply providing healthcare services. The Court also clearly indicated that apart from the educational aspect, Montfort Hospital plays a vital role in terms of maintaining the French language and transmitting Francophone culture, and that the existence of this hospital fosters solidarity among the minority population.[49]

The Commissioner must once again emphasize that this does not simply involve delivering French-language services.

However, one major challenge which the Commissioner envisions in the next few years will be to ensure that the government, its ministries and other government agencies understand that they must not only respect the letter of the law but the spirit of the law as well.

For example, a ministry may very well decide to eliminate a certain number of intermediaries or to look for ways to integrate various agencies. The objective is commendable and is completely understandable in a context of budget austerity measures. However, in resorting to such actions, it is important to take care to avoid discrediting institutions in the Francophone community, which are already more fragile due to their minority context, as these institutions should not be subjected to the control of other agencies from the majority language community.

Ensuring that all agreements with third parties include a contractual clause to require provision of French language services may perhaps respect the letter of the law, but not necessarily its spirit. This is because by eliminating a Francophone agency or forcing one that already provides services to its community to collaborate with or subcontract for a third party, a ministry would run the risk of no longer respecting the intent of the legislation — i.e. the spirit of the *Act*.

[49] *Lalonde v. Ontario*, *supra* note 8, par. 71.

Over the next few years, all decisions concerning government transformations should therefore be analyzed within this context.

5.2 THE WORK OF THE DRUMMOND COMMISSION

Within the context of his 2010-2011 Annual Report, the Commissioner made an innovative recommendation by directly addressing the Franco-Ontarian community for the very first time:

> "The Commissioner recommends that the Franco-Ontarian community take an active part in renewing the delivery of government services by proposing innovative, pragmatic, results-oriented means and methods to ensure its development."

This recommendation was further to the government's decision to create the Commission on the Reform of Ontario's Public Services, announced during the presentation of the Budget delivered to the Legislative Assembly in March 2011.

Last December, in response to this recommendation, the *Assemblée de la Francophonie de l'Ontario (AFO)* sent a letter to the Commission which reiterated the importance of refraining from compromising the essential nature of French language services for Francophones, while inviting the government to start a dialogue with the community in order to define models which respond to its needs. In fact, some Francophone agencies already provide public services which are offered in both French and English, often through inter-agency collaboration, but primarily through work with several ministries.

At the time, the Commissioner also met with the Chair of the Commission in order to share his concerns. He also highlighted the opportunities available to the Franco-Ontarian community in the context of this reform, but cautioned against all-around privatization — which is far from being an optimal solution in the context of a linguistic minority. Moreover, in 2009, one of the Commissioner's recommendations to the government was to ensure that all statutes authorizing the privatization of services contain specific clauses clearly indicating that the rights prescribed in the *French Language Services Act* would continue to apply.

In dealings with the Commission, the Commissioner emphasized that part of the solution would be to create French work environments where services would be offered in both languages. He also recommended that the government move away from the "siloed culture" which continues to persist in some of its ministries, and work with Franco-Ontarian stakeholders to develop innovative, pragmatic and results-oriented means and methods to provide quality services.

In February 2012, the release of the Commission's report, known as the Drummond Report,[50] did not go unnoticed, given the unprecedented number of recommendations. Indeed, more than 360 recommendations were compiled in this document, including 105 for the healthcare sector alone, which absorbs close to 50% of the province's budget. Right from the beginning, the authors of the report provide a clear analysis:

> "To meet its own goal of a balanced budget in seven years, the government will have to cut program spending more deeply on a real per capita basis, and over a much longer period of time, than the Harris government did in the 1990s."[51]

However, the Commissioner views the Drummond Report as a way for Francophones to seize opportunities such as **creating multi-service centres** in partnership with the federal government and selected municipalities, in order to facilitate the delivery of bilingual services – an idea which the Commissioner had already mentioned in his last annual report. Though in this report, the Commissioner added an important twist: language of work in these centres would be French, like it is done so in Manitoba's Bilingual Service Centres.

The report suggests private sector participation in ServiceOntario in order to optimize resources; according to the authors of the report, this new model must comply with the standards governing the delivery of public services, such as delivering services in both official languages.

Nevertheless, after reading the Drummond Report, the Commissioner issued a news release in which he made the following statement:

> "To be blunt, I intend to oppose any program privatization, abolition or merger that do not offer, in advance, concrete and pragmatic guarantees that can be implemented in the field concerning the maintenance and improvement of French-language services."[52]

[50] On February 15, 2012, the Commission on the Reform of Ontario's Public Services released a voluminous report with 362 recommendations. The Commission's mandate consisted of providing advice on ways to balance the budget before 2017-2018, and, once the budget is balanced, ensure that the financial situation is viable and that the government is getting its money's worth in all of its activities — not to recommend the privatization of healthcare and education services and not to recommend raising taxes.

[51] For more information: http://www.fin.gov.on.ca/en/reformcommission/chapters/report.pdf (page consulted in April 2012).

[52] Available online: http://www.fisc.gov.on.ca/en/node/120 (page consulted in April 2012).

5.3 THE 2012 ONTARIO BUDGET

The 2012 Ontario Budget sets the tone for the government's intentions to change the delivery of public services in Ontario:

> "Focusing on core business means scaling back non-priority programs, eliminating programs that the government should not be delivering, or identifying programs that the private sector could deliver more efficiently."[53]

Indeed, the 2012 budget announced proposed legislation that would enable the government to pursue a number of potential public-private partnership models for ServiceOntario, while continuing to set customer service standards and ensure protection of privacy and personal data.[54] Of course, as far as the Commissioner is concerned, it will be essential to ensure that **these customer service standards also include guarantees for the delivery of the same quality of services in French and English**.

The budget also announced that "Over the next 12 to 18 months, the Province will draw on experiences in other places to find pilot projects where new service delivery models can be initiated."[55] This is therefore a wonderful opportunity that should be seized by Francophone communities in the province, as it is directly linked to the recommendation on this subject, published in the 2010-2011 Annual Report of the Commissioner of French Language Services.

5.3.1 Public-private partnerships

The government should nevertheless consider lessons from previous public-private partnerships, including some of the hard lessons learned with Teranet, which was a monumental failure in terms of French-language services. During this misadventure, it became quite clear that Teranet had not been made aware, from the start, about the needs of Francophones. The result? The full-fledged implementation of an enormous, complex and expensive electronic land registration system whose use is compulsory in Ontario ... but which does not allow electronic registration in French!

It is important to mention that Teranet was the subject of one of the very first complaints received by the Commissioner in 2007 and unfortunately, it appears that five years later, the issues with this system are far from being resolved. We hope that this situation serves as a lesson.

In his 2009-2010 annual report, the Commissioner had already highlighted the issue of disappearing French language services following privitization and even recommended that the **Minister Responsible for Francophone Affairs** stop this dangerous spiral. The situation is somewhat different here, in that the government is not trying to privatize services but to ensure that they are offered through the private sector, by non-governmental organizations or by any other third party, based on the terms of negotiated agreements.

The Commissioner was certainly pleased to learn of the adoption of *Regulation 284/11*, which will now govern the delivery of French language services by third parties on behalf of government agencies. However, this regulation cannot cover the numerous and different forms of potential partnerships, which may include the possible creation of new entities. For example, Teranet was created using private capital but with the assurance of guaranteed contracts to provide services on behalf of the government.

However, a stich in time saves nine!

With respect to the "customer service standards" to be included in the proposed legislation announced in the Budget mentioned earlier, this could simply mean adding specific provisions to ensure that all public-private partnerships are subject to the obligations provided in the *French Language Services Act* and that any new entity created for the purposes of these partnerships is also subject to the obligations of this *Act*, if applicable.

According to the Commissioner, this type of provision would prevent any potential loopholes. It would also offer citizens guaranteed protection of the quality and accessibility of services which they are entitled to receive, regardless of the type of organization or its relationship to the government.

RECOMMENDATION 5

The Commissioner recommends that the Minister Responsible for Francophone Affairs ensures that all proposed legislation or any other measure leading to the creation of a public-private partnership that includes a component to deliver public services incorporates provisions which would make any entity associated with these partnerships subject to the *French Language Services Act*.

[53] *Supra* note 38.
[54] *Ibid.*
[55] *Ibid.*

5.3.2 Delegated Administrative Authorities

The Commissioner is greatly concerned about the recourse to delegated administrative authorities — i.e., self-funded non-profit organizations which operate at arm's length from the government. Indeed, in the past, this model did not lead to the adequate provision of French language services.

In his 2008-2009 Annual Report, the Commissioner wrote:

> "The government has created many independent organizations operating at arm's length from the government. Over the years, the ministries, which were subject to the *French Language Services Act*, failed to meet their obligation under the *Act* to transfer their legal obligations to these newly created organizations. In the process of creating them, compliance with the letter and the spirit of the *Act* has been eroded. And yet, as is true for government agencies, ministry powers and responsibilities have been delegated to these authorities. They are governed by framework agreements between the ministry and a private not-for-profit corporation. The ministry remains accountable and retains control over aspects prescribed by the *Act* and its regulations; the organizations assume responsibility for the regulatory, financial, and administrative aspects of service delivery. They are accountable to the government."[56]

However, these delegated administrative authorities are not government agencies within the meaning of the *Act* and are therefore not subject to the obligations provided under the *Act*. According to the Commissioner, they should be considered as third parties within the meaning of *Regulation 284/11*. Still, this is a convenient way for the government to circumvent its obligations to provide French Language Services, at least directly!

The Commissioner has handled several complaints related to this issue, as reported in previous annual reports. Due to the vigilance of the complainants, it appears that the Commissioners submissions have yielded results – at least to some extent.

For example, within the context of the *Retirement Homes Act, 2010*[57] lawmakers created the Retirement Homes Regulatory Authority. In the future, this organization will undoubtedly play a major role for Francophones, due to the aging population. Section 110 of this Act[58] ensures that citizens will always have access to French language services. However, officially and from a legal point of view, the Retirement Homes Regulatory Authority is not subject to the *French Language Services Act*. Indeed, Section 110 demonstrates good intentions even though it ultimately offers reduced protection. It does not offer all the guarantees of the *Act*, including the ability to file a complaint with the Commissioner's Office in the event of a problem. The Commissioner believes that lawmakers could very well have taken completely legal measures to ensure that this agency was subject to the *French Language Services Act* right from the beginning. This would have been an efficient and effective solution that reflects a government which is mindful of making thoughtful choices.

Bill 55,[59] which proposes the adoption of the measures found in the 2012 Budget, specifically states that delegated administrative authorities are not Crown agencies. If this is so, why not include a provision to ensure that all newly-created delegated administrative authorities, or other similar entities, are fully subject to the provisions of the *French Language Services Act*? After all, the purpose of this bill is to **provide for the efficient and effective delivery of delegated government programs and services** by independent not-for-profit corporations operating within a strong accountability and governance framework.[60] The Commissioner could not agree more with this laudable objective, as long as French-language services are an integral part of what is considered to be an "efficient and effective delivery of delegated government programs and services." Otherwise, the result would be a violation of the spirit of the *Act*.

RECOMMENDATION 6

The Commissioner recommends that the Minister of Consumer Services take all the necessary measures to ensure that all newly-created delegated administrative authorities, or other similar entities, are fully subject to the provisions of the *French Language Services Act*.

[56] Office of the French Language Services Commissioner, *supra* note 18, p. 46.
[57] Retirement Homes Act, 2010, S.O. 2010, c. 11.
[58] Section 110 of the *Retirement Homes Act*, 2010 states that "Everyone has the right to use French in all prescribed dealings with the Authority. The Authority shall ensure that all communications, information and notices with respect to any prescribed dealings with licensees, residents or members of the public are made available in French in accordance with the regulations."
[59] Bill 55, Strong Action for Ontario (Budget Measures), 2012 and its Annex 16 Delegated Administrative Authorities Act, 2012 where section 28 indicates that delegated administrative authorities will not be assimilated to Crown agencies.
[60] *Ibid*, section 1.

5.4 CONCLUSION

The Commissioner intends to remain vigilant to make sure that the needs of the Francophone community are taken into account in any decisions that the government makes to overhaul public finances. The Commissioner believes that these needs must be integrated right at the beginning of the design or planning stage of any merger, elimination or privatization of programs and services that the government would like to undertake in order to optimize its resources. **The Ontario government must not only respect the letter of the law but the spirit of the law as well.**

Lastly, the Commissioner firmly believes that upstream integration of French language services contributes to efficiencies in public services and is synonymous with viability and excellence. He also believes that such efficiencies cannot be achieved without the collaboration of active forces from the Francophone community to help determine the specific needs of this population.

"There is a fundamental difference between being able to use one's second language in everyday activities and being comfortable doing so when interacting with someone in authority — a public servant, a police officer or a judge — or when feeling vulnerable, for example, when seeking health care."

Exemplary practices

IN HIS FIFTH ANNUAL REPORT, the Commissioner continues his tradition of highlighting exemplary practices, best practices and innovation by government ministries and agencies in the delivery of French-language services.

This year, the Commissioner's Office received over one hundred submissions from ministries and agencies — a record number that has added a greater level of difficulty for choosing which ones to showcase.

But this difficulty also means that ministries and agencies are working hard to provide quality services to Francophones and, in many instances, have managed to turn complaints into lasting service improvements.

This year, once again, the exemplary practices selected by the Commissioner have been chosen primarily because they were developed in partnership with the Franco-Ontarian community. This chapter also includes best practices that have set an example for other ministries and agencies. Finally, the Commissioner has selected a sample of government initiatives worthy of an honourable mention.

Although it is impossible to include each and every one of the exemplary and best practices that were submitted, the Commissioner is very encouraged to see a steady growth in submissions and would like to sincerely thank all ministries and agencies for their participation.

6.1 PARTNERSHIPS

6.1.1 Evolution of French-language services in the Justice sector

The importance of providing adequate and continually improved French-language services in the Justice Sector is the idea that drives the Justice Sector Annual Francophone Stakeholders Meetings that are organized each year by the **Ministry of the Attorney General** and the **Ministry of Community Safety and Correctional Services**.

In 2011, the Ministries renewed their commitment toward the Francophone community to continue this fruitful collaboration as part of the second phase of the Justice Sector's strategic planning for French-language services.

In the new cycle of Strategic planning for French Language Services 2011-2015, both Justice Sector managers and stakeholders will work together to ensure the adoption and integration of government concepts that seek to improve French-language services. These concepts include French-language services results-based planning, the integration of French-language services accountability mechanisms, the recommendations highlighted in the research study on the mechanisms of offer and demand for French-language services in Ontario's Justice Sector, and a number of initiatives stemming from recommendations made by the Commissioner.

In March 2012, the Commissioner attended the Justice sector's Annual Stakeholders Meeting to applaud these initiatives in person.

6.1.2 French Language Institute for Professional Development

Providing adequate language training to justice professional is also another important means to improve French-language services in our court system. It is also the reason for the creation of the French Language Institute for Professional Development (FLIPD) — an award-winning project, jointly sponsored by Justice Canada and the **Ontario Justice Sector**.

This year, FLIPD took a leap into an online environment (e-FLIPD) to complement the ongoing training that was being offered sporadically throughout the year. This initiative was developed in partnership with the Criminal Law Division, the ***Association des juristes d'expression française de l'Ontario*** *(AJEFO)* and the Justice Sector Office of the Coordinator of French Language Services.

The Commissioner is pleased with this initiative that provides innovative tools and resources to contribute to the overall improvement of justice in both official languages.

6.1.3 Teaching literature from other parts of the French-speaking world

In June 2011, the **Ministry of Education** created a highly promising partnership with ***Coopérative Enseignants Pas à Pas*** *(CEPAP)*, a not-for-profit cooperative of ethnically and culturally diverse Francophone teachers in the Ottawa region. Together, they developed a project to provide teachers with tools to work more effectively with immigrant students over a 14-month period.

In addition to workshops for teachers at French-language schools who have Francophone newcomers in their classrooms, this project provides for the distribution of a selection of books from 12 of the countries of origin of these students. The Commissioner believes that this is an excellent example of a partnership for implementing adapted strategies that will enable teachers to create bridges that will facilitate student learning in our increasingly diverse communities.

6.1.4 Making new students feel welcome

Cultural and linguistic diversity is the focus of another exemplary practice which took the form of a welcoming campaign called *Grâce à moi* [Thanks to Me]. The goal of this campaign by ***Conseil des écoles catholiques du Centre-Est*** *(CÉCCE)* was to inform, raise awareness, equip, and mobilize staff and parents around the importance of extending a warm welcome to students who were newcomers and students from exogamous families (in which only one parent speaks French).

This campaign was created in response to a **Ministry of Education** guideline in the Policy Statement and Guidelines on the Admission, Welcoming, and Support of Students in French-Language Schools in Ontario (2009), which was developed following the Ministry's *Aménagement Linguistique* policy for French-language education. Rolled out from January 16, 2012, to March 11, 2012, this campaign included a website, www.graceamoi.ca, on which staff, parents, and students spoke of their experiences at the school and their pride in being members of a French-speaking, Catholic community.

6.1.5 Francophone Early Learning and Child Care Advisory Group

In August 2011, the final phase of the transfer of child care responsibilities from the Ministry of Children and Youth Services to the **Ministry of Education** was announced. With this transfer, came the opportunity to expand the scope and membership of advisory groups to include both early learning and child care.

The Ministry cleverly seized this opportunity to establish the Francophone Early Learning and Child Care Advisory Group — an advisory group that will serve as a forum to connect Francophone stakeholders in the education and child care sectors to provide advice on important policy and program issues.

6.1.6 Coaching certification offered in French

Another collaborative venture deserves mention: the **Ministry of Education**'s collaboration with the **Ontario Federation of School Athletic Associations** on certification in coaching a variety of sports that is now available in French. This was made possible through the efforts and cooperation of a community liaison officer of the *Élargir l'espace francophone* Initiative [Expanding the vitality of the francophone community], which is supported by the Ministry of Education and coordinated by *LE CLÉ (Centre canadien de leadership en évaluation)*.

This certificate program has been designed for teachers and members of the community. It fosters ties between the school and the Francophone community, while offering high-quality training that is linked to the curriculum. It has also been recognized by the Coaching Association of Canada.

6.1.7 Swimming and nutrition in French!

The Ministry of Education and the Commissioner commend the partnerships that have been established between the French-language schools in North Bay and Sudbury, the **YMCA**, and health promotion agencies **Health Nexus** and the **Ontario Physical and Health Education Association** (OPHEA). Over the past three years, these partnerships have made it possible for 300 students to take swimming lessons in French and 150 other students to take part in an after-school program, *Après l'école*, for sports, recreational activities, and nutrition. This was made possible through the efforts of a community liaison officer from the *Élargir l'espace francophone* Initiative [Expanding the vitality of the francophone community], which is supported by the Ministry of Education and coordinated by *LE CLÉ (Centre canadien de leadership en évaluation)*.

6.1.8 *Aménagement linguistique* policy at the postsecondary level

In August 2011, the **Ministry of Training, Colleges and Universities** developed its own *aménagement linguistique* policy that extends a policy that had been developed by the Ministry of Education for French-language elementary and secondary schools. This new policy focuses on strategies for enabling Ministry partners — i.e. French-language and bilingual postsecondary education and training institutions — to promote and expand the use and knowledge of French and ensure the provision of services in French. A second objective is to enhance the economic and employment opportunities available to Ontario residents through the

recognition that linguistic and cultural skills are increasingly valued in today's competitive global market.

The Commissioner is very pleased to see the Ministry embrace the importance of French-language education at the postsecondary level. He also believes that this policy — if adhered to over the medium and long term — will provide much needed options for French-speaking high school graduates wishing to continue their education in French in Ontario.

6.1.9 Consultation on the governance of French-language education

In July 2011, the **Ministry of Education** approved a new policy on consultations with its French-language education partners. This policy provides for consultations with various associations, boards, federations, and umbrella organizations in the field of education on proposals for amendments to the *Education Act* and regulations. Basically, it reaffirms the ministry's commitment to openness and transparency on changes regarding the governance of French-language education and the importance of taking into consideration information and opinions provided by the partners who are consulted. The Ministry of Education is to be applauded on this approach. The Ministry's new Consultation Policy on Governance of French-Language Education is posted on its website.[6]

6.1.10 An international strategy for French-language education

The **Ministry of Training, Colleges and Universities** has also been working on a strategy to promote Ontario internationally as a first choice destination for French-language postsecondary education. The Commissioner fully agrees with the bold vision for this strategy that sees Ontario becoming a leader in the internationalisation of French-language higher education. As well, the Commissioner believes that attracting French-speaking postsecondary students from abroad would also have the added benefit of bringing a greater diversity of perspectives and opinions into our classrooms.

6.1.11 Champlain LHIN's collaboration with Francophone stakeholders

The collaboration between Ontario's 14 Local Health Integration Networks (LHIN) with the province's six new French Language Health Planning Entities is finally taking shape and has begun producing results. This is the case, particularly in Eastern Ontario where the **Champlain LHIN** has worked collaboratively with the local French-language health planning entity (Entity #5) and the ***Réseau des services de santé en français de l'Est de l'Ontario***. Together, they have established terms and conditions for French-language services that are now included in the accountability agreements of services providers along with a template to monitor and ensure compliance.

The Champlain LHIN and the *Réseau des services de santé en français de l'Est de l'Ontario* also held a joint two-hour education session for the LHIN's board of directors to ensure that administrators understood their new responsibilities as a result of the new accountability agreement with the *Réseau*.

6.1.12 Testing bilingual highway signage with Francophones

The **Ministry of Transportation** deserves praise for its efforts to recruit Francophone volunteers to test a new series of bilingual variable message highway signs. Information about testing sessions was forwarded to a large number of Francophone stakeholder organizations including the ***Association française des municipalités de l'Ontario*** *(AFMO)*, the ***Fédération des aînés et retraités francophones de l'Ontario*** *(FAFO)* the ***Assemblée de la francophonie de l'Ontario*** *(AFO)* and French-language teaching establishments such as ***Collège Boréal***, **Glendon College** and ***La Cité collégiale***.

These outreach efforts paid off as the Ministry obtained its targeted Francophone participants in Toronto, Sudbury and Ottawa. The Commissioner is very pleased to hear that the Ministry's outreach efforts were successful as this means that the opinions of Francophones are being taken into account in the planning and development of the new series of variable highway messaging.

6.1.13 Ontario Arts Council

In 2011-2012, the **Ontario Arts Council**, an agency of the **Ministry of Tourism, Culture and Sport**, continued its fine work through its Artists-in-Residence project in partnership with French-language school boards. The project involves a team of artists that are selected by the boards to work within Francophone schools to provide on-going support for the creation of artistic works and acquisition of artistic skills by learners.

[6] Available online: http://www.edu.gov.on.ca/eng/amenagement/ConsultEducation.pdf (page consulted in April 2012).

6.2 HONOURABLE MENTIONS

6.2.1 Revised Cabinet Office criteria for submissions

Cabinet Office has continued to improve the integration of French-language considerations in its policy development process. Last fall, it introduced a new template for all policy submissions to Cabinet that explicitly advises ministries to (i) consider the impact of their proposals on Francophone communities, (ii) consider the impact of their proposals on the Ontario Public Service , including French-language services, (iii) consult French Language Services coordinators in their ministries when developing a proposal, particularly with respect to compliance with the *French Language Services Act*, and (iv) make use of available corporate policy development tools designed to help policy staff ensure inclusiveness.

Cabinet Office also made other improvements by (i) updating its standardized communication plan used by ministries to ensure that Francophone audiences are always considered in all communications planning, (ii) by adding closed captioning technology with French language translations on the Premier's website and YouTube channel, and (iii) by holding four training sessions with over 150 communications and agency staff to outline the expectations and requirements to fulfill the new French-language communication guidelines and directive.[62]

6.2.2 Improving services at Provincial Offences Court

Provincial Offences Courts typically deal with parking infractions and traffic offences, like speeding. Since 2002, these courts have have been administered by municipalities with oversight by the **Ministry of the Attorney General**.

In 2007, the Ministry formed a sub-committee of municipal and provincial partners and French-langauge stakeholder groups to identify and resolve issues regarding the delivery of French-language services. The Ministry reports that this committee achieved significant results by successfully adapting tools and resources for municipal partners. In addition, the committee has recommended best practices to municipal courts based on a survey administered to better serve the Francophone community.

The Commissioner is pleased with this initiative that illustrates how various levels of government and entities can reach out across boundaries to find ways to improve government services.

6.2.3 French-language social services in Sudbury

February was a busy month for the **Ministry of Community and Social Services** and **Ministry of Children and Youth Services** regional offices in Northern Ontario. Indeed, these grouped ministries hosted a professional development day for French-speaking front-line workers in the City of Greater Sudbury.

As well, the ministries held a highly successful two-hour workshop with the executive directors of those same agencies to discuss French Language leadership and best practices on a shoestring budget.

The goal of both events was to enhance the active offer of French-language services by social services and educational agencies — a shared goal, fully supported by the Commissioner. The Commissioner also applauds the theme that was chosen for the full-day professional development session : "Intuitive leadership — Competency to work in French is more than Language skills — It's a Welcoming Reception."

6.2.4 Welcoming greetings from ServiceOntario

Welcoming, language-appropriate greetings are now part of the customer experience for citizens calling **ServiceOntario**, an agency of the **Ministry of Government Services**. Thanks to technology, where available, contact centre agents are now discretely informed that a caller has selected either "English" or "French." This "whisper" feature allows agents to adapt their greetings according to the language preference of the caller, thus contributing to making callers feel instantly welcome from the very start of their conversation.

6.2.5 Bilingual messages sent to all government vendors

The Ministry of Government Services has also made other improvements, this time in the government procurement realm. Much to the Commissioner's delight, broadcast messages addressed to all Ontario Government vendors are now sent out in both English and French.

[62] This directive and accompanying guidelines were published in the Commissioner's investigation report on a communications failure during the H1N1 public health situation. For more information: http://www.flsc.gov.on.ca/files/files/FLSC-H1N1-Report-2011.pdf (page consulted in April 2012).

6.2.6 Hello LCBO and improved active recruitment

The LCBO has improved its French-language customer service through its helloLCBO/allôLCBO contact centre. Customers now have direct access to this fully bilingual customer support line through multiple channels including telephone, TTY, email, on the Web at helloLCBO.com and alloLCBO.com and through live chat.

The LCBO has also taken a major step to help with the active recruitment of bilingual employees by creating a retail employee database that helps track the level of French-language verbal proficiency of retail employees. The database, which indicates an employee's current work location (store), enables senior retail management to make effective and timely decisions regarding bilingual recruitment needs.

6.2.7 Information for newcomers about the Francophone community

In July 2011, the **Ministry of Citizenship and Immigration** launched a special section on its OntarioImmigration.ca website for Francophone newcomers. The *Ontario français* section provides essential information about the rights of Francophones and services available in Ontario in the areas of education, health and legal services. Along with a bit of history about the Franco-Ontarian community, the *Vivre en français* and *Culture franco-ontarienne* Web pages provide helpful links to key Francophone organizations, community groups, festivals and other events.

This new section is a positive response by the Ministry to a complaint that was received regarding a ministry-funded municipal immigration website and its lack of bilingual content.

6.2.8 Celebrating the heritage and culture of Franco-Ontarians

The **Ministry of Tourism, Culture and Sport** deserves an honourable mention this year thanks to innovative measures at Fort William Historical Park, one of its attractions. Essentially, the Park has developed enhanced French-language digital and geo-social media experiences for visitors through content that is accessed by scanning QR codes with a smartphone. The codes lead to highly informative content including photos, tips and recommendations that can then be easily and instantly shared with friends on Facebook and Foursquare using geo-social apps.

6.2.9 The CN Tower honours Franco-Ontarians!

For the very first time, on the evening of September 25, 2011, the CN Tower was lit up in green and white in celebration of Franco-Ontarian Day. This came about through the work of a community liaison officer in the *Élargir l'espace francophone* Initiative [Expanding the vitality of the francophone community], which is supported by the **Ministry of Education** and coordinated by *LE CLÉ (Centre canadien de leadership en évaluation)*. Congratulations!

Conclusion

OVER THE COURSE OF THIS FIFTH YEAR of operations, the team at the Commissioner's Office adopted a new vision, as mentioned by the Commissioner in the foreword to this report. This new vision can be found on the inside cover of this document. It clearly reflects the challenge that the Commissioner's Office has met in its first five years.

From the very beginning, the Commissioner made it clear to all deputy ministers that he was going to watch for deficiencies in French-language services, not just in the area of communications, but also in the services themselves. Since then, the Commissioner has taken pains to repeat the same mantra: services must be tailored to meet the needs of the client being served, that is, the Franco-Ontarian community. And to achieve that goal, one must consult the community to comprehend its particular issues and challenges. By doing so, the government will be able to participate fully in the Franco-Ontarian community's development and fulfil the intent of Ontario's lawmakers when they passed the *French Language Services Act* 25 years ago. After all, it is not just about obeying the letter of the law; its spirit too must be honoured.

The staff of the Commissioner's Office have worked extremely hard since the beginning to ensure that citizens who take the time to report a deficiency in French-language services know that their complaints are having an impact. However, some investigations take more time than others, to make sure that we are asking the ministries and other government agencies the right questions — the systemic questions. On that point, the Commissioner asks the public's indulgence. After all, the Commissioner's Office only has six permanent employees, which is quite inadequate and rather disproportionate in comparison with the number of staff in comparable agencies. And unfortunately, with the budgetary difficulties that Ontario is facing at the moment, that is not about to change.

Nevertheless, when one considers the activities of the Commissioner's Office, its visibility in the community and the media, and especially the government's responsiveness to the Commissioner's recommendations, it is hard to believe that only five years have elapsed since it was established. This is not boasting, but rather, recognition that the Commissioner's Office delivers value for money for Ontario's citizens.

The acivities of the Commissioner's Office always centre on the needs of Ontario's citizens, both individually and collectively. Therefore, as the first five-year period draws to a close, the entire team joins the Commissioner in expressing their sincere thanks, first and foremost, to our complainants, who, by their actions, have shown their deep attachment to French-language services.

Indeed, citizens who turn to the Commissioner's Office to report problems regarding French-language government services show that they believe in the accountability of ministries and government agencies.

Our gratitude also extends to the entire Franco-Ontarian community. With its constant drive to innovate, its ability to rally together and its will to rebuild itself, it continually impresses the team and encourages the Commissioner and his small staff to excel. Accordingly, the Commissioner is fully satisfied with the work that has been done and is now looking "straight forward" towards the future.

Responses to recommendations of 2010-2011

RECOMMENDATION 1

The Commissioner recommends that the Franco-Ontarian community take an active part in renewing the delivery of government services by proposing innovative, pragmatic, results-oriented means and methods to ensure its development.

Government's response:

As a government, we welcome the full participation of the province's citizens in the democratic process. We encourage Franco-Ontarians to share their ideas and vision with government, and to promote consultation and feedback. As a government, we honour and recognize the importance of the active participation of Francophones in the development and growth of the Franco-Ontarian community and the improvement of the services they depend on.

RECOMMENDATION 2

The French Language Services Commissioner recommends that the **Ministry of Children and Youth Services** take all available steps to establish residential education programs for Francophones aged 13 to 18 in Toronto by the beginning of the 2011-2012 school year.

The Commissioner also recommends that the Government of Ontario study the situation province-wide to ensure that adequate education programs are available in French to help Francophone teens with behavioural disorders reach their full potential.

Government's response:

Day treatment programs are offered through child and youth mental health services. The objective of the programs is to provide treatment and support for children and youth who are unable to attend a local school due to their identified social, emotional, behavioural or psychiatric needs.

We are committed to ensuring that Francophone youth have access to day treatment programs and have committed funding to the initiative. We continue to work with service providers to ensure that these services are available.

- *Our government is committed to providing students with special education needs the support they need to achieve their full potential.*
- *For students with care and/or treatment needs who are not able to attend regular school settings, education programs are attached to existing care, treatment, custody and/or correctional facilities so that the educational needs of a student continue to be met.*
- *These programs are a partnership between care, treatment, custody and/or correctional facilities and local school boards. The school board provides the educational component and the community agency provides the treatment and supervision.*
- *Where a need for an educational program in a care, treatment, custody and/or correctional facility is identified, we are prepared to review proposals through our annual approval process and consider whether a proposal meets applicable program and funding requirements.*
- *The Ministry is examining the delivery of section 23 programs and services for all students, including Francophone students, in need of care, treatment or custody in order to support improved student achievement and well-being.*

RECOMMENDATION 3

The French Language Services Commissioner recommends that the Ministry of the Environment ensure that Francophones have at their disposal, in French, all required information to fully participate in the province's waste reduction, reuse and recycling programs in order to meet the government's environmental objectives. To accomplish this, the Ministry must take regulatory action to ensure that all parties involved respect their obligations under the *French Language Services Act*.

Government's response:

The Ministry of the Environment agrees with the Commissioner that it is important to ensure that Francophones have at their disposal, in French, all required information to fully participate in the province's waste reduction, reuse and recycling programs in order to meet the government's objectives.

In this context, the ministry will continue to communicate with the public on waste diversion programs in both French and English and to work with our partners to communicate the importance of informing the public in both languages. The ministry will also look at every opportunity to require all its partners to communicate with the public in French and English.

RECOMMENDATION 4

The French Language Services Commissioner recommends that the Ministry of Energy seek to amend the *Electricity Act* to ensure that the Ontario Power Authority be subject to the *French Language Services Act* insofar as its programs, services and communications targeted to the general public are concerned.

The French Language Services Commissioner also recommends that the Ministry of Energy seek to amend the *Electricity Act* to ensure that any current or future entity created under the *Electricity Act*, including Hydro One and Ontario Power Generation, be subject to the *French Language Services Act* insofar as programs, services and communications targeted to the general public are concerned.

Government's response:

The Ministry of Energy is fully committed to respecting both the letter and intent of the French Language Services Act.

Hydro One, Ontario Power Generation (OPG) and the Ontario Power Authority (OPA) are not formally subject to the French Language Services Act. However, our agencies are committed to also reflecting the spirit of the law.

The OPA has demonstrated this commitment through communications strategies and tactics such as:

- *The development in French of the saveONenergy campaign,*
- *The production of French language bill inserts, posters, print ads and direct mail made available to local electric utilities to customize and distribute to their customers to encourage French-speaking consumers to fully participate in energy conservation,*
- *The update of the saveONenergy website that also has content in both French and English for residential customers.*
- *The Ontario Power Authority is also working in partnership with electric utilities that are developing additional French language marketing materials for their regions to facilitate the sharing of these resources with other electric utilities.*

The Ministry of Energy will work with its agencies to identify more formal mechanisms to ensure that the spirit and intent of the French Language Services Act are respected.

Responses to recommendations from previous years

RECOMMENDATION 3

The Commissioner recommends that the Minister propose a clear regulation to govern the delivery of French-language services under a contract with a third party who has agreed to provide services on behalf of a government agency or under a new public-private partnership.

Government's response:

The new regulation was approved in June 2011 and took effect on July 1, 2011. To help government agencies better understand the requirements of the regulation, the Office of Francophone Affairs (OFA) organized an information forum, which took place on July 18, 2011. Over 100 participants, representing ministries and other government agencies, attended the all day session. This forum included presentations by the Deputy Minister Responsible for Francophone Affairs, the OFA and Crown Law Office Civil, as well as a session on best practices related to the delivery of FLS by third parties.

In order to support government agencies in meeting the 3 year deadline for compliance and the reporting requirements set out in the regulation, a CAO Steering Committee and an Interministerial Policy Working Group (IPWG), led by the OFA, were established in August 2011. This governance model will ensure that a coordinated approach to the implementation of the regulation is developed and implemented at the corporate level and that existing resources, processes and effective French-language services (FLS) practices can be leveraged strategically.

Under this governance model, the CAO Steering Committee oversees the work of the IPWG and the four sub-committees established to share information, share and develop tools and resources and address implementation issues in a collaborative and coordinated manner.

The first phase of the implementation process, involving the development of tools and resources to support ministries and other government agencies in complying with the regulation, has almost been completed. As part of this process, ministries have also been establishing internal working groups to oversee the implementation of the regulation.

The next phase will involve a review of existing third party arrangements, the identification of gaps in the delivery of FLS and the development of strategies to achieve government agency compliance with the regulation by June 30, 2014.

The high degree of participation and attendance by staff on the committees and sub-committees working on the implementation of this important regulation has been quite remarkable. It is a clear and positive indication of the commitment level of all government agencies involved in the implementation process to meeting the compliance deadline.

OUR VISION

The Office of the French Language Services Commissioner works to ensure active, integrated delivery of French-language services in support of the development of the Francophone community and Ontarian society.

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